113-203

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883~~4~~

No. ~~299~~ 24

L. R. TUCKER AND R. G. WILSON, PLAINTIFFS IN ERROR,

vs.

FRANK MASSER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 22, 1881.

was given "upon the express agreement that if not promptly paid at maturity the plaintiff might surrender it to the defendant, and its cause of action upon the original notes should thereupon immediately revive."

It was to be a compromise of the original indebtedness if paid at its maturity, not otherwise.

The plaintiff has sued here on his original cause of action, and this note is but the evidence of an attempted compromise which has failed.

It cannot be reasonably claimed that this note is to be treated as a renewal of the original debt.

It was made for no such purpose. No such office was assigned to it. Nor does the plaintiff in his pleadings or recital of facts, present it in that character.

This note, therefore, is left without consideration *or vitality*.

And if it had been intended as a renewal or extension of the original notes in whole or in part, it would be open to the same objection of want or illegality of consideration.

1 Daniel on Negotiable Instruments, 205;
9 Allen, R. 39;
21 Howard, 441.

As to the two notes upon which in the twenty-second count of the declaration the defendant is sued as guarantor, the facts as to the creation of the guaranty and its consideration are similar to those relating to the note described in the twenty-first count and must stand or fall with that note.

We submit, therefore, that there was no error in the judgment of the Court below.

JAS. G. PAYNE,
Attorney for Defendant in Error.

13-203

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1 Pleas in the Circuit Court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 23d day of March, A. D. 1880, came Frank Masser by T. A. Green and Geo. C. Bates, his attorneys, and filed in said court his complaint and sued out of said court a writ of summons against L. R. Tucker and R. G. Wilson. And the said complaint is in words and figures as follows, to wit:

Complaint.

UNITED STATES OF AMERICA, *ss.*

In the United States Circuit Court for the district of Colorado, May term, A. D. 1880.

FRANK MASSER, plaintiff,
vs.
L. R. TUCKER & R. G. WILSON, defendants. } Complaint in ejectment.

The said plaintiff, Frank Masser, who is a citizen of the state of Michegan, complains of said defendant, L. R. Tucker and R. G. Wilson, who are both citizens of the state of Colorado, and states: That plaintiff was, on the 10th day of March, A. D. 1879, and still is the owner, by prior actual possession on the public domain, and by superiority of possessory title, and entitled to the immediate possession of the following-mentioned and described premises, to
2 wit: Lots thirty, (30,) thirty-one, (31,) and thirty-three, (33,) all in block seven (7) of Stevens & Leiter's subdivision of the city of Leadville, in the county of Lake and state of Colorado. That said lots and premises are of the value of five thousand dollars. That said defendants did, on the 20th day of March, A. D. 1879, wrongfully and unlawfully enter upon said lots and premises and unlawfully oust the plaintiff from the same, and still unlawfully and wrongfully withhold the possession of the *of the* same from the plaintiff, to his damage in the sum of one thousand dollars.

Plaintiff states that the rents and profits per month of said premises since the date of said ouster have been two hundred dollars, and the aggregate rents and profits three thousand dollars.

Plaintiff therefore asks judgment for the possession of said premises, and for one thousand dollars damages, and for three thousand dollars for rents and profits.

(S'g'd) T. A. GREEN,
GEO. C. BATES,
Att'ys for plaintiff.

Address of T. A. Green, 376 Lawrence street, Denver, Col.

(Endorsed:) No. 438; Circuit Court U. S.; Frank Masser *vs.* Tucker & Wilson; complaint; filed May 23, 1880; (s'd) Edward F. Bishop, clerk. T. A. Green, Geo. C. Bates, for plaintiff.

And the said summons is in words and figures as follows, to wit:

3 *Complaint.*—Filed in the clerk's office this 23d day of March, A. D. 1880.

In the Circuit Court of the United States for the district of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss.*

FRANK MASSER, plaintiff,
versus
L. R. TUCKER and R. G. WILSON, defendants.

The President of the United States of America to L. R. Tucker and R. G. Wilson, greeting:

You and each of you are hereby notified that an action has been brought in said court by Frank Masser, plaintiff, against you as defendants, to recover the possession of certain real property situate in the county of Lake and state of Colorado, to wit: lots numbered thirty (30), thirty-one (31), and thirty-three (33), all in block seven (7) of Stevens and Leiter's subdivision of the city of Leadville, and for the sum of one thousand dollars damages and for three thousand dollars rents and profits, as more particularly set forth in the complaint herein, to which reference is here made.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do, the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, and will apply to the court for the relief demanded therein.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said Circuit Court, at the city of Denver, in said district, this 23d day of March, A. D. 1880, and of the Independence of the United States the 104th year.

[SEAL.] (S'g'd) EDWARD F. BISHOP,
Clerk.

4 *Proof of Service.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss.*

LEADVILLE, COLORADO, *M'ch* —, A. D. 1880.

I hereby certify that I received the within writ on the 26th day of March, A. D. 1880, and that I have personally served the same upon L. R. Tucker and R. G. Wilson, the said defendants, by delivering to them personally a true copy of the within writ, at the day and

time as follows: At Leadville, county of Lake, on the 27th day of March, A. D. 1880.

This writ, therefore, returned served, as the law directs, this 19th day of April, A. D. 1880.

(S'g'd) P. P. WILCOX,
Marshal.
By C'Y B. AYRES,
Deputy Marshal.

(Endorsed:) Gen. No. 438; Circuit Court of the United States for the district of Colorado; Frank Masser, plaintiff, *versus* L. R. Tucker and R. G. Wilson, defendants; summons; filed this 19 day of April, A. D. 1880; (s'g'd) Edward F. Bishop, clerk; T. A. Green of Denver, Geo. C. Bates of Leadville, attorneys for plaintiff.

5 And afterwards and on, to wit, the 3d day of May, A. D. 1880, came the defendants by Wilson and Taylor, their attorneys, and filed in said court and in said cause their answer to the complaint heretofore filed herein. And the said answer is in words and figures as follows, to wit:

Answer.

UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

In the United States Circuit Court of the 8th judicial circuit for the district of Colorado.

FRANK MASSER, plaintiff,
vs.
L. R. TUCKER and R. G. WILSON, defendants.

Defendants come by Wilson & Taylor, their attorneys, and for answer to plaintiff's complaint herein deny—

That on the 10th day of March, A. D. 1879, or at any other time, plaintiff was or now is the owner by virtue of prior actual possession, or by superiority of possessory title, or by any other right or title, of the premises described in plaintiff's complaint, to wit: Lots thirty, (30,) thirty-one, (31,) and thirty-three (33) in block seven (7) in Stevens and Leiter's subdivision of the city of Leadville, in the county of Lake and state of Colorado.

Defendants deny that plaintiff is now or ever was at any
6 time entitled to the possession of said premises or any part thereof.

Defendants deny that said premises are of the value of five thousand dollars.

Defendants deny that on the 20th day of March, A. D. 1879, or at any other time, they wrongfully or unlawfully entered upon said

premises or unlawfully ousted plaintiff from the possession of the same or any part thereof, and deny that they unlawfully or wrongfully withhold from plaintiff the possession of said premises, and to plaintiff's damage in the sum of one thousand dollars or any other sum whatever.

Defendants deny that the monthly rents and profits of said premises have been since said 20th of March, 1879, or are now, worth two hundred dollars.

For further answer to plaintiff's complaint, defendants say that they were on the 20th day of March, A. D. 1879, have been ever since, and are now the owners in fee of said above described lots thirty (30) and thirty-three, (33,) and eighteen feet off of the west side of said lot thirty-one, (31,) and as such were then, have been ever since, and are now entitled to the possession of said premises and every part thereof.

Wherefore defendants, having fully answered, ask to be dismissed hence with their costs in this behalf expended.

(S'g'd) WILSON & TAYLOR,
Attorneys for Defendants.

Address of def'ts' att'ys, city of Leadville, Lake co., Colo.

7 (Endorsed:) No. 438; U. S. Circuit Court; Frank Masser, plaintiff, *vs.* L. R. Tucker and R. G. Wilson, defendants; answer of def't; filed May 3, 1880; (s'd) Edward F. Bishop, clerk; Wilson & Taylor, def'ts, att'ys.

And afterwards and on, to wit, the 18th day of May, A. D. 1880, came again the said plaintiffs by their attorneys aforesaid, and filed in said court and in said cause their replication to the answer of the defendants heretofore filed herein. And the said replication is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA.

In the United States Circuit Court for the district of Colorado, May term, A. D. 1880.

FRANK MASSER, plaintiff,
vs.
TUCKER and WILSON, defendants. } Replication.

And now comes said plaintiff and for replication to the new matter set up in defendants' answer wholly denies that the said defendants, or either of them, was on the 20 day of March, 1879, or at any other time, was the owner in fee or otherwise of the lots and
8 premises in question, or any part thereof or interest therein; and wholly denies that said defendants or either of them was

at that date or any other time, or is now, entitled to the possession of said premises or part thereof.

(S'g'd) T. A. GREEN,
Att'y for Plaintiff,
433 Larimer street, Denver, Col.

(Endorsed:) No. 438; Frank Masser *vs.* Tucker & Wilson; replication; filed May 18, 1880; (s'd) Edward F. Bishop, clerk; T. A. Green, att'y for plaintiff.

And afterwards and on, to wit, the 9th day of June, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present: the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order to Open Depositions.

FRANK MASSER
vs.
L. R. TUCKER and R. G. WILSON. } For possession of specific real property and for damages.

At this day comes the said plaintiff by T. A. Green, esq., his attorney, and on his motion it is ordered by the court that all
9 depositions now in the office of the clerk in this cause be opened, published, and filed as of this day.

And afterwards and on the same day, to wit, the 9th day of June, A. D. 1880, a certain deposition on behalf of plaintiff was opened, published, and filed in said court and in said cause. And the said deposition is in the words and figures as follows, to wit:

Plaintiff's Deposition.

In the United States Circuit Court for the state of Colorado, May term, A. D. 1880.

FRANK MASSER
vs.
TUCKER & WILSON. } Notice to take deposition.

The defendants, or their attorneys of record, are hereby notified that the said plaintiff will, on the 4th day of May, A. D. 1880, at the office of J. B. Bashear, esq., a notary public within and for the county of Lake, state of Colorado, at his office, 261 Harrison ave., in room in brick building N. W. cor. State & Harrison aves., building in the city of Leadville, in the county and state aforesaid, between the hours of 8 o'clock a. m. and 10 o'clock p. m., at 6½ p. m. of said day, proceed to take depositions of the following witnesses, to be read in evidence in behalf of said plaintiff on the trial of said cause, to wit: Frank Masser, John W. Pendery, E. Nichols, Wm. Lundy,

John F. Humphrey, Wm. Jones, John Montgomery, Mary
10 Benton, Fanney Smith and T. D. Anthony.

When and where you may appear and cross-examine said witnesses. The taking of said depositions will be adjourned from day to day thereafter between the same hours until the depositions of all of said witnesses shall be taken.

(S'g'd) GEO. C. BATES,
T. A. GREEN,
Attorneys for Plaintiff.

STATE OF COLORADO, }
Lake county, } *ss.*

Frank Masser, being duly sworn, doth depose and say that I personally served a duplicate of the within notice on Leyard R. Tucker, one of the defendants in said cause, on Saturday, the 1 day of May, 1880, at 10 a. m., in Leadville.

(S'g'd) FRANK MASSER.

Sworn and subscribed before me this 1 day of May, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

(Endorsed:) Cir. Court U. S.; Frank Masser *vs.* Tucker & Wilson. Copy of notice to take deposition before J. D. Brashear, notary public, at 6½ p. m. on Tuesday, May 4, 1880, at 201 Harrison avenue, N. W. corner of Harrison avenue & Second street. Geo. C. Bates, pl'ff's att'y.

UNITED STATES OF AMERICA.

In the United States Circuit Court for the state of Colorado, May term, 1880.

FRANK MASSER, plaintiff,
11 *vs.* }
LEDGYARD R. TUCKER and —— WILSON. }

I hereby certify that pursuant to notice on the 4th of May, 1880, at Leadville, state of Colorado, and pursuant to sec. 863, Revised Stat. U. S., page 163, the above plaintiff did call and did cause to appear before me in the city of Leadville, in said district, the following witnesses to testify on behalf of the plaintiff in the above entitled cause, now pending in said Circuit Court, in the district aforesaid, wherein the above named are plaintiffs. And said witnesses being of lawful age, and having been cautioned, did depose as follows, namely:

FRANK MASSER, plaintiff in this suit, being first duly sworn, did depose and say: I am the plaintiff in this suit. I am a citizen of Layton, Alligan county, Michigan, where my family still live on the homestead. I came to Leadville in March, 1878, and have remained

here continuously down to Nov., 1879, when I went home and spent the winter. I am a carpenter and joiner by trade, and know the defendants in this suit. The property in controversy in these suits are worth at least $4,000 cash. I went to John A. Northrup in July, 1878, who is the nephew of Wm H. Stevens, and was then and is now the agent of Stevens & Leiter for the sale of their lots on
12 their placer mining tract in the city of Leadville, and applied to him for the purchase of lots of Stevens & Leiter's tracts. Northrup told me to go up on Park street and select some lots. I went up on Park street and selected four lots, Nos. 30, 31, 32, 33, block 7, on what was then called Park street but now Fourth street, and is the property in controversy. I went back to Northrup and reported to him that I had selected the above-named lots; he, Northrup, told me I could have them four lots for $25 a piece, and directed me to go on and build on them. I went on and built four buildings, one on each lot. During the time I was erecting these buildings Northrup came there, saw what I was doing, and approved my actions. In January, 1879, after Stevens & Leiter had obtained there patent covering my property, I went repeatedly to Northrup's office, tendered to him the $25 for each lot, and demanded my deeds therefor. But he put me off from time to time, and finally I employed Judge Pendry to go with me and tender the $25 for each lot and demand my deeds, which Northrup refused to give, telling me that those lots had been sold to defendants, Sheriff Tucker and Wilson.

Afterwards, in April, 1879, when I was in the peaceful, pedal, actual possession of all said lots by myself and my tenants, the defendants, Sheriff Tucker and Wilson, came with an armed posse without due process of law, tore down all my buildings but one, and moved that on lot No. 33. Carried off the timber, utterly
13 demolished the property, and took forcible possession of lots 30, 31, & 32, which they have ever since kept, and of which they and their grantees are now in possession. I sued them before Justice Ballow for forcible entry & detainer; obtained a judgment, but was refused a writ of restitution. During the time they were destroying my houses, they used revolvers themselves and their mob with them, and drove me off by arms and violence. I am now in possession of lot 33, for which ejectment in this court is now pending against me. During the last year defendants have moved buildings — these lots 30, 31, & 32. The damages committed by defendants in destroying my buildings and personal property will amount to $5,000. The defendants never served any notice on me to quit possession of said premises, nor gave me any warning to leave before cleaning out my property. The defendant Tucker was then and still is sheriff of this county, and defendants are both men of wealth. I am poor and came on foot from Michigan to this place.

(S'g'd) FRANK MASSER.

Sworn and subscribed to before me this May 4th, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

JOHN MONTGOMERY, a witness for the plaintiff in this suit, being first duly sworn, doth depose and say: I am of lawful age. I know the plaintiff in this suit and defendant Sheriff Tucker. I was present in April, 1879, when Sheriff Tucker an a number of other people tore down, demolished, and destroyed the building of the plaintiff, on lots 30 in block 7 of Stevens and Leiter's addition to Leadville. I owned a house on lot 29 in same block, and went then to see about my own property. Plaintiff had occupied lots 31 & 32 all the winter of 1878 & 1879, and Amanda Martin occupied lot 30 all that winter. Defendants and the mob with them, by force of arms, with pistols and deadly weapons, drove off the plaintiff and cleaned off the lots, and have held possession ever since. I live still on lot 29 in the same block. I came to Leadville in March, 1878, and have been mining more or less ever since.

(S'g'd) JOHN MONTGOMERY.

Subscribed and sworn to before me this 4th day of May, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

WM. JONES, witness produced and sworn for the plaintiff in this case, deposeth and saith: I know the plaintiff, and have known him a year and a half. I know the defendants. I was present in April, 1879, when the defendants, with a crowd of people,
15 armed with revolvers and other weapons, tore down the plaintiff's houses on lots 30, 31, 32. I live just across the street from those lots. Plaintiff had been in possession of those lots all that fall and winter; but since then the defendants have had possession of them, and have houses and an unfinished log building. At the time that I speak of the defendants and the mob with them completely cleaned off plaintiff's buildings and ejected him therefrom. I came to Leadville in Dec., 1878, and am in business here now.

(S'g'd) WILLIAM JONES.

Subscribed and sworn to before me this 4th day of May, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

WM. LUNDY, witness produced for the plaintiff, and sworn, doth depose and say: I know the plaintiff in this suit, and both the defendants by sight. I was present in April, 1879, when the defendants broke open the plaintiff's house, on lot 32, in block 7. I saw them removing the furniture from the house and carrying it across another lot. There was ½ doz. men with them, and there were many of them armed with revolvers. They carried everything out, & took possession by force. The plaintiff had been in occupancy of

these premises for two or three months previous to the forci-
16 ble entry of same by defendants, but has been out of possession thereof ever since, as witness personally knows. I have lived on lot 33, in block 7, ever since, and so know all about it.

(S'g'd) WM. LUNDY.

Sworn and subscribed to before me this 15th day of May, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

THEODORE ANTHONY, a witness produced on behalf of the plaintiff, being first duly sworn, doth depose and say: I know the plaintiff, Frank Masser, and have known him for something over a year. I also know John Northrup, who was acting as agent for Stevens and Leiter in the sale of these lots in their placer mining claim since Jan'y 1st, 1879. In Feb'y or March, 1879, I happened at Northrup's office in Leadville; there met plaintiff in this suit. Mr. Masser made an application to Northrup for some lots. Mr. Northrup put him off, for what reason I can't state. Masser stated to him that he was ready to take the lots. Northrup declined to give them to him. Immediately after this I advised Masser to employ Judge Pendery to go to Northrup & get his deeds.

(S'g'd) T. D. ANTHONY.

Sworn and subscribed to before me this 5th day of May, 1880.

[SEAL NOTARIAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

17 JOHN F. HUMPHREYS; a witness produced by the plaintiff, being duly sworn, deposes and says: I have been a resident of Leadville since the 1st Feb'y, 1879; I have been and still am engaged in real estate business on a large scale ever since my arrival here; I know the plaintiff in this suit and the defendants therein; I am familiar with lots 30, 31, 32, 33 in block 7, and I saw the same before the building thereon were destroyed in April, 1879, and I knew the plaintiff as being in possession of said buildings previous *the* April, 1879; after the buildings thereon had been destroyed I visited the lots at the request of the plaintiff, and I know personally that the plaintiff has been kept out of possession of lots 30, 31, & 32 in block 7 in Leadville since April, 1879; the use and occupation of these three lots from April, 1879, down to the present time is worth, in my opinion, $5,000.

(Signed) JOHN F. HUMPHREYS.

Subscribed & sworn to before me this 5th day of May, 1880.

[NOTARIAL SEAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

EDGAR NICHOLS, a witness produced on behalf of the plaintiff, and being first sworn, doth depose and say: I have known the plaintiff for over a year, and defendants, both of them, and I live now
18 and have lived on lot 28 in block 7 for nearly two years; the plaintiff in this suit lived near by me on lots 30, 31, 32, in block 7 in the fall of 1878; he had a shanty or a house on those premises, and in the spring of 1879 he put up some other shantys on the same premises, and in April, 1879, the defendant Wilson, and I think Sheriff Tucker, with several others, destroyed those buildings & removed them. Some of those men who were carrying off those buildings had revolvers and arms. The defendants removed the timbers from those lots and they it onto lot 29, next to me; since April, 1879, the defendant Wilson has claimed possession of said lots, and Masser, the plaintiff, has been kept out of possession ever since; I think the value of the damage to Masser for the use and occupation of the premises is fairly worth from $4,000 to $5,000.

(S'g'd) EDGAR NICHOLS.

Subscribed and sworn to before me this 5th day of May, 1880.

[NOTARIAL SEAL.] (S'g'd) JOSEPH D. BRASHEAR,
Notary Public.

UNITED STATES OF AMERICA, }
District of Colorado. }

I, Joseph D. Brashear, notary public in and for said state of Colorado, pursuant to sec. 863, page 163, of the Revised Statutes of the United States, providing for the taking of depositions de bene esse, do hereby certify—
19 That the reason for taking the foregoing deposition is and the fact is that the testimony of said witnesses is material and necessary for the plaintiff in the cause in the caption of the said deposition named, and the said witnesses do live, and did live at the time of taking said deposition, in Leadville, Lake county and state of Colorado, the same being more than 100 miles from the city of Denver, where the court at which it is expected said cause will be tried was appointed by law to be held, to wit, more than 180 miles therefrom.

I further certify that a notification of time and place of taking said deposition signed by me was made out and served on the said defendants to be present at the taking of said depositions. Copy of which notice is hereto appended, marked Exhibit "A," and made part of this my certificate.

I further certify that on the 4th day of May, 1880, I was attended at my office by the plaintiff and his attorney, Geo. C. Bates, esq., and that the several witnesses, who were of sound mind and lawful age, were by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions were by me reduced to writing in the presence of the wit-

nesses, and from their statements, and after carefully reading
20 the same to each witness, they subscribed the same in my presence.

I further certify that I have retained the said deposition in my possession, have sealed the same up and directed the same, with this my certificate of the reasons aforesaid for taking said deposition, with my own hand, to the court for which the same were taken.

I further certify that I am not of counsel nor attorney for either of the parties in said deposition, or in any way interested in the event of the said cause named in said caption.

And I do further certify that neither the defendants nor their attorneys attended the taking of said depositions, which were continued by me from the 4th to the 5th and 6th days of May, 1880, at my office in Leadville, at No. 201 on Harrison ave.

In testimony whereof I have hereto set my hand and seal this 12th day of May, in the year 1880.

(S'g'd) JOSEPH D. BRASHEAR,
[SEAL NOTARIAL.] *Notary Public, Lake co., Colo.*

(Endorsed:) No. 438; Circuit Court U. S.; Frank Masser *vs.* L. R. Tucker and R. G. Wilson; depositions of Frank Masser et al. on behalf of plaintiff; opened, published, and filed June 9, 1880; (s'd) Edward F. Bishop, clerk.

21 And afterwards and on, to wit, the 11th day of June, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Trial. Judgment.

438] FRANK MASSER *vs.* L. R. TUCKER and R. G. WILSON. } For possession of specific real property, &c.

At this day comes the said plaintiff by T. A. Green, esq., his attorney, no one appearing for the said defendants, and a jury also come, to wit: J. A. Hilliard, S. J. Plum, John T. Williams, Clarence J. Clarke, James C. Coulehan, E. G. W. Bartlett, Benjamin F. Marsh, Charles Quist, Robert Farrager, David S. Green, John Arrighe, and Benj. F. Hatel, good and lawful men, and they are duly selected and tried, impaneled and sworn, to well and truly try the issues herein joined and a true verdict give according to the evidence.

And the said jurors having heard the evidence of the said plaintiff in part, the said plaintiff discovering that the property in con-
22 troversy is not truly described in his complaint, moves the court for leave to amend his said complaint in respect to the description of the property in controversy, which is by the court allowed, but upon this condition, that the said plaintiff, the defendants

not being present, shall not at this trial claim or be allowed any damages for or on account of the ouster of the said complainant alleged or the detention of the said premises, which condition is by the said plaintiff accepted and the said amendment is accordingly made. Thereupon the said jurors having heard the evidence of said plaintiff and the instructions of the court, on their oaths do say they find the issues for the plaintiff, and that he is the owner and entitled to occupy and possess the premises described in the complaint, to wit: Lots thirty (30), thirty-one (31), all in block seven (7) of Stevens & Leiter's subdivision of the city of Leadville, in the county of Lake and state of Colorado. Wherefore let judgment be entered accordingly.

And thereupon and on the same day the said plaintiff by his attorney aforesaid filed herein his amended complaint as by the order of the court he was allowed to do. And the said amended complaint is in words and figures as follows, to wit:

23 *Amended Complaint.*

UNITED STATES OF AMERICA.

In the United States Circuit Court, May term, 1880.

FRANK MOSSER
vs.
L. R. TUCKER and R. G. WILSON. } Amendment to complaint.

And now by leave of court the plaintiff amends his complaint by striking out "lot number thirty-three (33")" in the seventh line of the complaint from the bottom of the first page.

(S'g'd) T. A. GREEN.

(Endorsed:) 438; Circuit Court U. S.; Frank Mosser *vs.* Tucker & Wilson; amendment to complaint; filed June 11, 1880; (s'd) Edward F. Bishop, clerk; T. A. Green, att'y for plaintiff.

And thereupon and on the same day, to wit, the 11th day of June, A. D. 1880, judgment was duly entered against the said defendant on the judgment book of said court and in said cause, in pursuance of the statute and rules of court. And the said judgment order is in words and figures as follows, to wit:

24 *Judgment.*

FRANK MASSER
438] *vs.*
L. R. TUCKER and R. G. WILSON. } For possession of specific real property and for damages.

On this the 11th day of June, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court, there being present the Honorable Moses Hallett, district judge:

It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the property, lands, and tenements in its said complaint mentioned, to wit: Lots thirty (30) and thirty-one, (31,) all in block seven (7) of Stevens and Leiter's subdivision of the city of Leadville, in the county of Lake and state of Colorado, and that he have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 21st day of July, A. D. 1880, came the said defendants by A. S. Weston, esq., their attorney, and filed in said court and in said cause their motion and affidavit
25 for a new trial. And the said motion and affidavit is in words and figures as follows, to wit:

Motion and Affidavit for New Trial.

UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

In the Circuit Court of the United States, district of Colorado.

FRANK MOSER, pl'ff, }
vs. }
L. R. TUCKER and W. J. WILSON, def'ts. }

And now comes the defendants and move the court to set aside the verdict and grant a new trial in the above entitled cause, and shows the following reasons, to wit:

1st. For the reasons set forth in the affidavit hereto attached and made part of this motion.

2d. For other good and sufficient causes apparent on the face of the records and proceedings in this case.

(S'g'd) A. S. WESTON,
Att'y for Def'ts.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States, district of Colorado.

FRANK MOSSER, plaintiff, }
vs. }
L. R. TUCKER and W. J. WILSON, defendants. }

26 L. R. Tucker, being first duly sworn according to law, on oath says that he is one of the above-named defendants; that said suit was commenced in the District Court of the state of Colorado in and for the county of Lake, and was removed to the Circuit Court of the United States for the district of Colorado; that he and his co-defendant retained and employed Wilson and Taylor, attor-

neys of this court, residing in the city of Leadville, in the state of Colorado, to defend said cause in the Circuit Court, and this affiant had reason to believe and did believe that said Wilson & Taylor were attending to and defending said cause, but this affiant has been informed that default has been taken against the defendants and a judgment entered against them for the possession of the property in controversy in this cause, and for damages for the detention thereof; that he was first informed of these facts within the last five days, and that said Wilson & Taylor are both absent from the city of Leadville and cannot immediately be communicated with to ascertain what has been done by them in this cause; that the default taken in this court was not through the fault or negligence of the defendants or either of them, but was entirely through the negligence of their attorneys.

That this affiant has reason to believe and does believe that the defendants in this cause have a good and meritorious defense
27 herein, and that they are the owners in fee of the property in controversy in this cause.

(S'g'd) L. R. TUCKER.

Subscribed and sworn to before me this 19th day of July, A. D. 1880.

[SEAL NOTARIAL.] (S'g'd) D. CLINTON LYLES,
Notary Public.

(Endorsed:) No. 438; in the Circuit Court of the United States, district of Colo.; Frank Moser, pl'ff, *vs.* L. R. Tucker and J. W. Wilson, def'ts; motion and affidavit to set aside verdict and grant new trial; filed July 21, 1880; (s'g'd) Edward F. Bishop, clerk; Weston & Rowell, att'ys for def'ts.

And afterwards and on, to wit, the 22d day of July, A. D. 1880, came again the said defendants by their attorneys aforesaid, and filed in said court and in cause their petition for stay of execution and motion for new trial. And the said petition is in words and figures as follows, to wit:

Petition to stay execution.

UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

In the Circuit Court of the United States, district of Colorado.

FRANK MASER, pl'ff,
28 *vs.*
L. R. TUCKER and W. J. WILSON, def'ts.

And now come the defendants, your petitioners herein, and show the court that judgment has been rendered against them in the above-entitled cause, and that writs have been issued from this honorable

court and are now in the hands of the marshal; and they have paid the costs and moved for a new trial herein according to the statute in such case made and provided; wherefore they pray the court that said writs be returned and proceedings herein be stayed until the further hearing of said cause.

(S'g'd) A. S. WESTON,
Att'y for Def't.

(Endorsed:) No. 438; in the Circuit Court of the United States of America, dist. of Colo.; Frank Moser, pl'ff, *vs.* L. R. Tucker and W. J. Wilson, deft.; petition of def'ts to stay execution; filed Jul. 22, 1880; (s'd) Edward F. Bishop, clerk; A. S. Weston, att'y for def'ts.

And the said motion for new trial is in words and figures as follows, to wit:

Motion for new trial.

29 UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

In the Circuit Court of the United States, dist. of Colorado.

FRANK MASER, pl'ff, }
vs. }
L. R. TUCKER and W. J. WILSON, def'ts. }

And now come the defendants and move the court to set aside the verdict and judgment herein and grant a new trial according to the statute in such case made and provided, and for cause shows to the court that they have paid the cost in said case as required by law.

(S'g'd) A. S. WESTON,
Att'y for Def't.

(Endorsed:) No. 438; in the Circuit Court of the United States of America, dist. of Colorado; Frank Masser, pl'ff, *vs.* L. R. Tucker & W. J. Wilson, Def'ts; motion for new trial; filed July 22, 1880; (s'd) Edward F. Bishop, clerk; A. S. Weston, att'y for def'ts.

And afterwards and on the same day, to wit, the 22d day of July, A. D. 1880, the same being in vacation preceeding the October term, A. D. 1880, of said court, the following proceeding was had and entered of record in said court and in said cause, to wit:

30 *Order Staying Execution.*

FRANK MASSER, }
438] *vs.* } For possession of specific real
L. R. TUCKER and W. J. WILSON. } property and for damages.

It appearing that the costs in this cause have been paid and a motion for a new trial filed, it is ordered that the execution in the hands

of marshal be stayed until the next term of this court, and until the motion of the said defendants shall have been heard

And afterwards and on, to wit, the 5th day of October, A. D. 1880, the same being one of the juridical days of the October term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order Granting New Trial.

FRANK MASSER
vs.
L. R. TUCKER et al. } For possession of specific real property, &c.

At this day comes the said plaintiff, by T. A. Green, esq., his attorney, and moves the court to vacate the judgment lately had
31 herein and for a new trial of the issues herein.

And it appearing to the court that the taxed costs herein have been fully paid and discharged by the said defendants, therefore it is ordered that the judgment lately and on the 11th day of June last past had herein be vacated and for naught held, and that a new trial of the issues herein joined be had in pursuance of the statute in such case made and provided.

And afterwards and on, to wit, the 22d day of October, A. D. 1880, a certain deposition on behalf of defendants was filed in said court and in said cause. And the said deposition is in words and figures as follows, to wit:

Defendant's Deposition.

United States of America. Circuit Court of the United States for the eighth circuit and district of Colorado.

FRANK MOSSER, plaintiff,
vs.
L. R. TUCKER and WILLIAM J. WILSON, defendant. }

W. A. NORTHRUP, a witness produced and sworn on the part of the defendants, doth depose and say that he knows the de-
32 fendants in this suit and is well acquainted with the property in controversy and described in the plaintiff's complaint in the above-entitled cause, and that the same is a part and parcel of survey No. 271 claimed by Stevens & Leiter; that in the fall of 1877 said Stevens & Leiter built their office on the corner of Pine & 2d streets, which was within the boundaries of their said claim survey No. 271; that said office and a barn was all the buildings they, the said Stevens & Leiter, had in the way of improvements upon the said claim; that in the way of mining improvements said Stevens & Leiter had several shafts sunk upon said claim No. 271. Affiant further says that in the year of 1877 there was no other claimants to

this property that he knows of, except Stevens & Leiter; that the office of Stevens & Leiter aforesaid was finished in the fall of 1877; that no improvements were made in the vicinity of the lots in controversy up to March, A. D. 1878; that Stevens & Leiter claim the said lots survey No. 271 as a placer claim; and that a portion of said claim was claimed by adverse parties, but Stevens & Leiter bought them out. That to my knowledge the plaintiff in this suit did not make any claim upon this placer ground up to the time of the application of this patent.

(S'g'd) W. A. NORTHRUP.

Subscribed and sworn to before me this 20th day of October, A. D. 1880.

[SEAL.] (S'g'd) M. ADAMS,
Notary Public.

33 It is stipulated and agreed by and between the plaintiff and the defendants that the foregoing deposition may be read in evidence on the trial of the above cause and also in the case of Frank Mosser *vs.* Martha J. Henery & John J. Henery without objection, except as to competency.

(S'g'd) GEO. C. BATES,
Pl'ff's Att'y.

" WESTON & ROWELL,
Defts' Att'ys.

Oct. 20, 1880.

(Endorsed:) 438; Frank Mosser *vs.* L. R. Tucker et al.; deposition of W. A. Northrup, ac. def't; filed Oct. 22, 1880; (s'd) Edward F. Bishop, clerk.

And afterwards and on the same day, to wit, the 22d day of October, A. D. 1880, the same being one of the regular juridical days of the October term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order 2d Trial.

FRANK MOSSER
vs.
L. R. TUCKER and R. G. WILSON. } For possession of specific real property and for damages.

34 At this day comes the said plaintiff by T. A. Green, esq., his attorney, and the said defendants by C. J. Rowell, esq., their attorney, also come. And thereupon comes a jury, to wit: George W. Mabee, Francis E. Everett, C. G. Hathaway, Stephen S. Carter, H. H. Cordes, John T. Henderson, Frederick Cramer, Alvin Cummings, Lawrence Cassiday, Samuel Conger, Casper R. Hartman,

Matthew Boelert, good and lawful men, and they are duly selected and tried, impaneled, and sworn to well and truly try the issues herein joined, and a true verdict give according to the evidence. And the said jurors having heard the evidence produced herein and the instructions of the court, retire to their room to consider of their verdict.

And afterwards and on this same day come again the said jurors, and on their oaths do say they find for the plaintiff that he is the owner and entitled to occupy and possess the premises described in the complaint as amended, and assess his damages at one thousand eight hundred and fifty dollars ($1,850).

And afterwards and on, to wit, the 23d day of October, A. D. 1880, came again the said defendants by their attorneys aforesaid, and filed in said court and in said cause their motion for a nonsuit. And the said motion is in word and figures as follows, to wit:

35 *Motion for nonsuit.*

In the Circuit Court of the United States for the district of Colorado.
In the eighth circuit.

FRANK MOSSER
vs.
L. R. TUCKER et als.

Now comes the defendants and move the court for nonsuit against the plaintiff on the grounds:

1. That the said plaintiff claims title to the lots in controversy on this trial by virtue of prior possession and occupancy upon the public domain of the United States, and the evidence introduced shows he was not the prior occupant or possessor of the said lots upon the public domain.

2. That the evidence on the part of the plaintiff shows that plaintiff's claim rests upon a contract with Messrs. Stevens and Leiter to purchase said lots, and not by prior possession on unoccupied public domain.

3. That the said plaintiff has shown no legal title to the said lots, and on his own testimony nothing but an equitable claim to a title against the grantors of defendants.

A. S. WESTON,
C. J. ROWELL,
Att'ys for Def't.

36 (Endorsed:) No. 438; Circuit Court U. S.; Frank Mosser *vs.* L. B. Tucker et al.; motion for nonsuit; filed Oct. 23, 1880; (s'd) Edward F. Bishop, clerk; Weston & Rowell, deft's' att'ys.

And afterwards and on, to wit, the 26th day of October, A. D. 1880, came again the said defendants by G. G. Symes, esq., their attorney, and filed in said court and in said cause their motion for a

new trial herein. And the said motion is in words and figures as follows, to wit:

Motion for New Trial.

In the Circuit Court of the United States for the district of Colorado.
In the eighth circuit.

FRANK MOSSER
vs.
L. R. TUCKER et al.

Now come the defendants by their attorneys and move the court to set aside the verdict rendered and to grant a new trial in this case. And for grounds of their motion the defendants show to the court the following, to wit:

37 1. The court admitted on the trial improper evidence on the part of the plaintiff, that is to say, the court admitted in evidence the record of the proceedings in the United States land office preceeding the issuing of the patent for the purpose of impeaching and attacking the said patent collaterally.

2. The court improperly refused to grant the defendant's motion for nonsuit, because upon the testimony of the plaintiff in his deposition he only showed an equitable title or claim to the lots in dispute.

3. The court improperly charged the jury that said record of the proceedings in the land office preceeding the issuing of the said patent invalidated the said patent.

4. The court improperly charged the jury that the principal question for them to determine was the oldest actual possession of the said lots.

5. The court improperly refused to give to the jury instructions numbered 1, 2, 3, 4, 5, 6, 7, 8, requested by the said defendants on the trial.

6. The verdict is contrary to law and the evidence in the case in that the plaintiff only showed an equitable title to the property, and in that the evidence showed that the defendants are the oldest possessors of said property.

7. The damages are excessive, and appear to have been given under the influence of passion or prejudice.

38 8. Newly discovered evidence, material to the defendants, which they could not with reasonable diligence have discovered and produced at the trial, consisting of evidence which would show that the grantors of defendants had the pre-emption and possessory title to the said property as a placer mining claim long before the said plaintiff entered upon the said lots in any way.

(S'g'd) WESTON & ROWELL and
G. G. SYMES,
Att'ys for Def'ts.

(Endorsed:) 438; Circuit Court U. S. Frank Masser *vs.* L. R. Tucker et al. Motion for new trial. Filed Oct. 26, 1880; (s'gd) Edward F. Bishop, clerk. G. G. Symes, def'ts' att'y.

And afterwards and on, to wit, the 6th day of December, A. D. 1880, the same being one of the regular juridical days of the October term, A. D. 1880, of said court—present: the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

39 *Order for Judgment.*

FRANK MASSER
438] *vs.* } For possession of specific real
L. R. TUCKER and R. G. WILSON. } property, &c.

At this day comes the said plaintiff by T. A. Green, esq., his attorney, and the said defendants by G. G. Symes, esq., their attorney, also comes. And the motion of the said defendants for a new trial of the issues herein coming on now to be heard, and the court being now sufficiently advised in the premises, it is ordered by the court for good and sufficient reasons to the court appearing that said motion be denied.

Wherefore, on motion of the said plaintiff, let judgment be entered herein upon the verdict of the jury for the possession of the premises in the complaint mentioned, and for the sum of eighteen hundred and fifty dollars, in favor of the said plaintiff and against the said defendants.

And thereupon and on the same day, to wit, the 6th day of December, A. D. 1880, judgment was duly entered against the said defendants in the judgment book of said court and in said cause, in pursuance of the statutes and rules of court. And the said judgment is in words and figures as follows, to wit:

Judgment.

FRANK MASSER
438] *vs.* } For possession of specific real
L. R. TUCKER and R. G. WILSON. } property and for damages.

40 On this sixth day of December, A. D. 1880, the same being one of the regular juridical days of the October term, A. D. 1880, of said court, there being present the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendant possession of the property, lands, and tenements in said complaint as amended mentioned, to wit: Lots thirty (30) and thirty-one (31,) all in block seven (7) of Stevens and Leiter's subdivision of the city of Leadville, in the county of Lake and state of Colorado, and that he have a writ of possession therefor.

It is further considered by the court that said plaintiff do have and recover of and from the said defendant the costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 22d day of December, A. D. 1880, came again the said defendants and filed in said court and in said cause their bill of exceptions. And the said bill of exceptions is in words and figures as follows, to wit:

41 *Bill of Exceptions.*

UNITED STATES OF AMERICA, } ss.
District of Colorado. }

In the Circuit Court of the United States for the district of Colorado, in the 8th judicial circuit, at the general term thereof, begun and holden in the city of Denver, in said district, on the —— day of October, A. D. 1880.

Present: Hon. Moses Hallett, district judge, presiding.

FRANK MASSER, pl'ff, }
vs. }
LEFYARD R. TUCKER and R. G. WILSON, def'ts. }

Be it remembered, that on the trial of this cause, during the general term of this court, to wit, on the 22nd day of October, A. D. 1880, a jury having been duly empaneled and sworn, the plaintiff, to maintain the issues on his part, gave in evidence as follows, that is to say:

FRANK MASSER, plaintiff, being called and sworn, testified as follows:

42 Question. I'll get you to state to the court and jury, and speak out loud now so all can hear you, your name and age, and whether or not you are plaintiff in this suit?

Answer. My name is Frank Masser; I am 46 years old last June, and I reside in Michigan. I came here to Colorado three years ago last March—a little over—no, three years ago. In 1878 I went from Denver here up to Leadville; got up to Leadville in March, the 15th of March; was there awhile, and then I took up some lots and built me a house on them; took up four lots.

Q. State whether or not you are still a citizen of the state of Michigan?

A. Yes, sir; my family is there, my home is there. I took up four lots and built a house on them, and cleared the lots; they were all covered with sage brush and one thing and another. I lived there until April, 1879, and then this Sheriff Tucker and Wilson came there with an armed force; they had their revolvers and guns with them, and tore my houses down and throwed me off, and
43 throwed my household goods out into the streets, and broke up a sack of flour. I lost the whole of it, and some peaches, dried apples, fruit, one thing and another, and in the fracas when he first came he told me if I made any disturbance he would shoot me; he had his revolver in his hand; himself, Wilson, and another man,

this—I can't think of his name just now—well, the man that shot a man by the name of Grades up there at Leadville—deputy marshal, pretended to be, were with him; Miller is his name; he was with him; all had revolvers and drew revolvers; I couldn't do nothing with such a force; I didn't know but they might serve me just the same as Bush a few days before.

(Objected to.)

Q. Never mind anything outside of your own case; state what lots these are that are now occupied by Tucker and Wilson.

A. Well, the lots they took away from me—three lots, 30,
44 31, and 32, in block 7, Stevens and Leiter's addition. Then I went down town; I couldn't do nothing else; was there alone myself, and I went down town and got a warrant out for them and had them arrested.

(Objected to.)

Q. Never mind that; state to the court and jury about how long you had been in the peaceable possession of these lots before they came there to take possession.

A. Well, about betwixt ten and eleven months.

Q. State to the court and jury what, if any, improvements you had made in the way of houses, buildings, fences.

A. I had three buildings on the place; in fact, I had a building on each lot.

Q. How long had you had those buildings prior to their taking possession?

A. Well, one of them was built about ten months before, and the other two, one was built some time in the winter, and the other I was building when they came and tore them down.

45 Q. I will get you to state what lots at present are claimed and possessed by Tucker and Wilson, or were at the time of the commencement of this suit within their actual possession.

A. Lot 30 and part of 31.

Q. How much of 31?

A. 32 and 7 feet, I believe, off from the east part of 31 was out of their possession.

Q. All the rest was in their possession except lot 32 and 7 feet off?

A. Yes, sir.

Q. What is the size of these lots?

A. 25 feet. I think they are 100, 125; somewhere along there. I don't know exactly the depth of them. I never measured it.

Q. What is the value of the lots in this action here against Tucker and Wilson; what is the actual value of those lots?

A. There has been lots right side of them sold for a thousand dollars last fall; about the same value, I think.

Q. I just want to show the jurisdiction. What are the lots mentioned in this action worth?

46 A. They are worth a thousand dollars apiece, I should judge.

Q. State to the court and jury the value of the improvements that they tore down and destroyed as nearly as you can. Leave out the Henry lots. I want just what is in these suits.

A. Well, just on these lots probably a hundred dollars, the buildings.

Q. Their damage to the buildings was probably a hundred dollars?

A. About a hundred dollars. There was two that they tore down.

Q. State what the monthly rents were worth of this property from the time they took possession of it in April, 1879, up to the present time; about how much per month as near as you can.

A. With the building that I have on my other lot cost $500 to build it, brings me in $250. I could have bought some buildings on them at the same price, would have brought me in the same right there.

Q. What were they worth just as you had them per month?

47 A. Well, the rents were worth about—I had them rented for ten dollars a month for the time being each.

Q. Have rents gone up?

A. Yes, sir.

Q. State about what would have been a reasonable rent; I won't ask what would have been reasonable, rents in Leadville are all so unreasonable.

A. Take it the way it has run, could have made $250 a month. Probably a hundred dollars a month for those buildings I had on, take it right through, as rents have advanced all the time.

Q. Are these lots in a good business part of the town?

A. Yes, sir.

Cross-examination:

Q. You gave your deposition in his case I believe?

A. Yes, sir.

Q Did you swear in that deposition that you had bought these lots from Stevens and Leiter, after they had applied for the patent, and that you went into possession under them, and that that is the only title you have claimed?

A. Oh, no; I talked with them time and again about the lots after I had taken possession, and they were trying to get a patent,

48 and everybody was talking about their getting a patent, and about the St. Louis Company getting a patent, and I said that I would pay them for the lot.

Q. Have you not filed or commenced suit in the District Court of Lake county, an equitable action to enforce specific performance of what you claim to be a real estate contract, a verbal contract, under which you took posesssion of the property against Stevens and Leiter, and praying that court to decree that Stevens and Leiter make you deed of the legal title to this lot?

A. I don't know; I got Mr. Bates to do some business and to at-

tend to it; he drawed up several papers and signed them; I don't remember what they——

Q. Does that complaint, sworn to, state that you went to John Northrup, agent of Stevens and Leiter, who were selling these lots, and made a contract with him as the agent of Stevens and
49 Leiter, that he took and put you in possession of these lots, and that you had remained in possession ever since, put valuable improvements on them, and praying specific performance of the contract, and that you went to them several times, demanded a deed, and they refused to give it?

A. Certainly I went to them and demanded a deed; that was after they got their patent.

Q. Have you filed such a bill in this court?

(Objected to as immaterial and incompetent.)

Q. Is that your signature? (handed paper.)

A. Yes, sir; that is my name; I am not very good at reading writing; you can read it to me.

PLAINTIFF'S ATTORNEY: We concede that bill is filed; whatever facts are in the bill are conceded.

WITNESS: I was living on my place a long time before I made any bargain with John Northrup; everybody was going and making bargains with them; they refused to give me.

Q. Did you give this testimony: "I went to John A.
50 Northrup in July, 1878, who is the nephew of William A. Stevens, and was then and is now the agent of Stevens and Leiter, for the sale of their lots on their placer mining tract in the city of Leadville, and applied to him for the purchase of lots of Stevens and Leiter's tract. Northrup told me to go up on Park street and select some lots; I went up on Park street and selected four lots, Nos. 30, 31, 32, 33, in block 7, on what was then called Park street, but now Fourth street; I went back to Northrup and reported to him that I had selected the above-named lots; he (Northrup) told me I could have them four lots for $25 apiece, and directed me to go on and build on them; I went on and built four buildings, one on each lot; during the time that I was erecting these buildings Northrup came there, saw what I was doing, and approved my actions; in January, 1879, after Stevens and Leiter had obtained their patent covering my property, I went repeatedly to Northrup's office and
51 tendered him the $25 for each lot, and demanded my deeds therefor, but he put me off from time to time, and finally I employed Judge Pendery to go with me and tender the $25 for each lot and demanded my deed, which Northrup refused to give, telling me that those lots had been sold to the defendants, Sheriff Tucker and Wilson; afterwards, in April, 1879, when I was in the peaceful, pedal, actual possession of all said lots by myself and my tenants, the defendants (Sheriff Tucker and Wilson) came with an armed posse," &c., and put you off. Is that a true deposition that you swore to?

A. There seems to be a good many little points that I did not understand. I went——

Q. Wait, I tell you. This is a deposition you have given where you was examined on oath, and you have sworn to it, and this has been taken down. Is that true; is that deposition, or the portion of the deposition that I have read to you, true or false?

(Objected to.)

COURT: Show him the deposition.

52 PLAINTIFF'S ATTORNEY: We concede that to be his deposition; I just want the witness to have a chance.

WITNESS: It would take me a long time; there is some points in here; I told him how I had made a bargain, how I had made the lots, and he drew up his paper; this is the one; I don't know what his name is; notary public there drew it up; Mr. Bates was there, and he drew it up, and they didn't read it to me, and I signed it; I told Mr. Bates just as the thing transacted; they have got some things in there that did not transact—about my going, after selecting the lots, going back to Northrup and reporting to him that I had selected; that aint so; I didn't tell them to put that in there; I see they have got it, because I never did; I was in possession of the lots, was living on them; they have got some of that in there that I don't know anything about; they have made out the deposition, and I signed it; the notary public even didn't read it to me; he

53 probably will remember that himself.

Q. Did you sign and swear to this deposition?

A. I expect I did, sir, (handed deposition.) Yes, sir; that is my name.

Q. You also admit signing and swearing to this bill in chancery here, asking a specific performance of the contract of Stevens and Leiter, asking the court to decree them to make you a deed of the legal title?

A. Well, that is one Bates drew up.

PLAINTIFF'S ATTORNEY: Judge, we admit that.

Defendants, by their counsel, here offered in evidence the deposition spoken of by the witness as a part of his cross-examination, which is in the words and figures following, to wit: "Frank Mosser, plaintiff in this suit, being first duly sworn, did depose and say: I am the plaintiff in this suit; I am a citizen of Layton, Alligan county, Michigan, where my family still live in the homestead; I came to Leadville in March, 1878, and have remained here continuously down to November, 1879, when I went home and spent the winter; I

54 am a carpenter and joiner by trade, and know the defendants in this suit. The property in controversy in these suits are worth at least $4,000 cash.

"I went to John A. Northrup in July, 1878, who is the nephew of William H. Stevens, and was then and is now the agent of Stevens and Leiter for the sale of these lots in their placer mining tract

in the city of Leadville, and applied to him for the purchase of lots of Stevens and Leiter tract.

"Northrup told me to go up on Park street and select some lots. I went up on Park street and selected four lots, Nos. 30, 31, 32, 33, block 7—on what was then called Park street, but now Fourth street, and is the property in controversy. I went back to Northrup and reported to him that I had selected the above-named lots. He, Northrup, told me I could have them four lots for $25 apiece, and directed me to go and build on them. I went on and built four buildings, one on each lot. During the time that I was erecting these buildings Northrup came there and saw what I was
55 doing, and approved my actions.

"In Jan., 1879, after Stevens and Leiter had obtained their patent covering my property, I went repeatedly to Northrup's office, tendered him the $25 for each lot, and demanded my deeds therefor; but he put me off."

And finally I employed Judge Pendery to go with me and tender the $25 for each lot and demand my deeds, which Northrup refused to give, telling me that these lots had been sold to defendants, Sheriff Tucker and Wilson. Afterwards, in April, 1879, when I was in the peaceful, pedal, actual possession of said lots by myself and my tenants, the defendants, Sheriff Tucker and Wilson, came with an armed posse, without process of law, tore down all my buildings but one, and moved that on lot No. 33, carried off the timbers, utterly demolished the property, and took forcible possession of lots 30, 31, and 32, which they have ever since kept, and of which they and their grantees are now in possession.

56 "I sued them before Justice Ballou for forcible entry and detainer, obtained a judgment, but was refused a writ of restitution."

"During the time they were destroying my houses they used revolvers themselves and their mob with them, and drove me off by arms and violence. I am now in possession of lot No. 33, for which ejectment in this court is now pending against me."

"During the last year defendants have moved buildings these lots 30, 31, and 32."

"The damages committed by defendants in destroying my buildings and personal property will amount to $5,000.

"The defendants never served any notice on me to quit possession of said premises, nor gave me any warning to leave before cleaning out my property."

"The defendant, Tucker, was then and still is sheriff of this county, and defendants are both men of wealth."

57 "I am poor, and came on foot from Michigan to this place."

(Signed) FRANK MASSER.

Sworn and subscribed to before me this May 4th, 1880.

(Signed) JOSEPH D. BRASHEAR,

[SEAL.] *Notary Public.*

Q. Were you cross-examined by any one at this time when you gave your deposition?

A. No, sir.

Q. Was there any one present in behalf of defendant Tucker?

A. No; I notified Mr. Tucker myself; gave him the papers and notified himself; handed them to him; he never appeared.

Q. When the controversy first arose between you and Mr. Tucker and Wilson about these lots—the possession of them—did you not make a positive agreement with them that before you built on the lots you would wait until it was settled who should get a deed from Stevens and Leiter, they claiming a deed from them and you?

A. Oh, no; the first time Tucker ever said anything to me about was the time that he came to tear down the house; I asked him, in the controversy, what authority he had; he said he owned
58 the lots, and he was going to have them.

Q. Do you swear that before you ever built in either of those lots you did not have a conversation with Sirs Tucker and Wilson or Tucker, in which you said that as you claimed deed from Stevens and Leiter?

A. No, sir; I didn't know Tucker or either one of them; never seen them; didn't know them; they were strangers.

Q. Before you built the last cabin, not the first one?

A. The last cabin I was building; got it up; was building it when Wilson came around and said he owned the lots—him and Tucker; that I must not build; if I did he would tear them down; that was, I guess, just the day before he tore them down; I told him they was mine, and I built——

Q. You did not agree not to build?

A. No, sir.

Q. Didn't you build that last cabin in the night time?

A. No, sir; there was two men working; we worked in the day-time getting it ready, raised it in the day-time, built it up, put the roof on in the day-time.

59 Q. What kind of a roof did you put on?

A. We put on tar paper, put boards over, and tar paper.

Q. When you first went on to these lots, you knew Stevens and Leiter owned the land, and had applied for a patent for it?

A. No, sir; I didn't; everybody was building here and there and haphazard and taking lots and building, and I went on and built. Then in a short time after that they were jumping lots, and fussing around.

Q. Do you swear that you did not know when you first selected those lots, as you have stated in your deposition, that Stevens and Leiter owned the property, and had applied for a patent?

A. There was a good deal of talk about their trying to get a patent, and about the Leadville company, and Stevens and Leiter quarreling betwixt themselves, on account of the other men trying to get a patent. They was quarreling betwixt one another. Finally

after a long while they settled it up, and let Stevens and Leiter go on and get patent.

60 Q. Didn't you understand they had applied for a patent to this ground, possessory title to it, when you went on and built?

A. No, sir; I didn't; that Stevens and Leiter had.

Q. Who did you understand it was?

A. I could not understand whether the Leadville Improvement Company or Hallock was applying for a patent. I knew nothing about Stevens and Leiter applying for this patent. Theirs only reached over to State street, I think. Then afterwards they applied for the whole thing and it was all mixed up together.

Q. You knew it was not vacant, unimproved, public land?

A. No, sir; it was government land.

Q. You knew it was claimed there had been a patent applied for?

A. No, sir.

Q. Wasn't that your understanding?

A. Not at the time I went on to it; no, sir; it was after that.

Q. Had you built on that property when you went and selected the lots and came back and reported to Northrup?

A. I didn't come back and report to Northrup; they seemed

61 to have got something in there aint right; these lawyers sometimes get up things a poor fellow can't understand.

Q. You let your lawyers get up your depositions?

A. I don't know; that notary public wrote it out; Mr. Bates, a lawyer there, told him how; I signed it; they didn't read it to me; well, the notary public, he didn't read it to me after he wrote it out; I told him just how the thing was—how I got the lots, how I went on to them, and the dates.

Q. You claim title under Stevens and Leiter, do you?

A. No, sir; I went on to it as public domain; afterwards, when there was so much talk, jumping, fussing, fighting, and quarreling, I went to them with the rest, and made a bargain with them that I would pay them $25 a lot when they got the title.

Q. Do you claim under that contract in this deposition, and in this bill in equity?

(Objected to; the bill in equity will show.)

WITNESS: I was a poor man; come there to make a living,

62 an honest living, and then got robbed of it; my family, back suffering. (Witness weeps.)

Q. We don't care; tell me what kind of a building that was you first built on that lot.

A. The first one, it was built of boards and slabs.

Q. How large was it?

A. Two by four scantling; it was 12 by 20, and then there was an L put on to it 8 feet by 20.

Q. Wasn't there a fence built around those lots before you built the two last buildings, by other parties?

A. No, sir; there was not. A couple of days before they tore

my house down, this Wilson, and I think his brother and two or three others that he brought with them, brought some boards there, took my logs, cut them in two, dug little holes—they set on top of the ground—nailed a little board; a couple of days before they tore my house down surrounded me; that is all the fence there was there until after they drove me off; then they took my logs, cut them up, dug holes in the ground, set posts in, and put a fence around.

63 Q. Wasn't there a house built there on those lots before you built, in which a colored woman lived?

A. No, sir; there was not. A log house stood on the opposite lot a colored woman lived in. She is there now.

Q. Did you see Mr. Tucker there the day your house was torn down?

A. Yes, sir; I had him arrested.

Q. You saw Tucker?

A. Yes, sir; stood right there with his men, giving orders to his men to tear it down, and drawed his revolver. There was others there that seen him.

Q. Did you have a gun there?

A. No, sir; I ain't one of those fighting men.

Q. Did you sell what you claimed to be your title to those lots and right, some time before this occurred?

A. No, sir.

Q. Never sold it to a colored woman?

A. No, sir.

Re-direct examination:

Thereupon the counsel for the plaintiff asked the witness this question: "I want a little explanation of this deposition. State how long you had been in the actual possession of these lots before you ever went to this Northrup at all." To which question

64 the defendants, by their counsel, objected, for the reason——

But the court overruled the objection, and permitted the witness to answer the question, which he thereupon did as follows: "It was as much as two months."

To which ruling and decision of the court in permitting this question to be so asked and answered the defendants by their counsel then and there excepted.

Thereupon the witness further testified:

Q. State loudly and distinctly how long before you ever went to Northrup at all about these lots, had you been in actual possession?

A. Well, as much as two months, any way.

Q. State now whether or not Northrup was representing these parties that you understood were applying for a patent here.

A. Yes, sir; he was.

Q. State to the court and jury whether or not you went for the purpose of compromising any claim they might set under this patent.

65 A. Yes, sir; you might call it that; there was so much jangle and quarrel about lots, fighting, that I went, thought I had better pay them $25 than to have any trouble; there was a good deal of quarreling about lots there; I didn't want to get into any trouble; I wanted to get me a few lots and try and make something, and do it fair and honest.

Q. State, now, whether or not since the filing of that petition there, or complaint in court, the patent of Stevens and Leiter has been declared void, respecting your suit.

(Objected to; objection sustained.)

Plaintiff by his counsel here offered in evidence the depositions of John Montgomery, William Jones, William Lundy, Theodore Anthony, John F. Humphreys and Edgar Nichols, and are in the words and figures following, to wit:

In the United States Circuit Court for the state of Colorado, May term, A. D. 1880.

FRANK MOSSER
vs.
TUCKER and WILSON.

66 *Notice to Take Deposition.*

The defendants, or their attorneys of *of* record, are hereby notified that the said plaintiff will on the 4th day of May, A. D. 1880, at the office of J. B. Brashear, esq., a notary public within and for the county of Lake and state of Colorado, at his office 201 Harrison avenue, in brick building N. W. cor. of State street and Harrison avenue, in room building in the city of Leadville, in the county and state aforesaid, between the hours of 8 o'clock a. m. and 10 o'clock p. m., at 6½ p. m. of said day, proceed to take depositions of the following witnesses, to be read in evidence in behalf of said plaintiff on the trial of said cause, to wit, Frank Mosser, John W. Pendery, E. Nichols, Wm. Lundy, John F. Humphrey, William Jones, John Montgomery, Mary Benton, James Smith and T. D. Anthony, when and where you may appear and cross-examine said witnesses. The taking of said depositions will be adjourned from day to day
67 thereafter between the same hours until the depositons of all of said witnesses be taken.

(Signed) GEO. P. BATES,
T. A. GREEN,
Attorneys for Plaintiff.

STATE OF COLORADO, *Lake county,* } ss.

Frank Mosser, being duly sworn, doth depose and say that he personally served a duplicate of the within on Ledyard R. Tucker, one of the defendants in said cause, on Saturday, the 1st day of May, at 10 a. m., in Leadville.

(Signed) FRANK MOSSER.

Sworn and subscribed to before me this 1st day of May, 1880.

[SEAL.] (Signed) JOSEPH D. BRASHEAR,
Notary Public.

(Endorsed:) Circuit Court U. S.; Frank Mosser *vs.* Tucker and Wilson. Copy of notice to take deposition before J. D. Brashear, notary public, at 6½ p. m., on Tuesday, May 4th, 1880, at 201 Harrison avenue, northwest corner of Harrison avenue and Second street. Geo. C. Bates, plaintiff's attorney.

68 United States of America. In the Circuit Court of the United States for the state of Colorado, May term, 1880.

FRANK MOSSER, pl't'ff,
vs.
LEDYARD R. TUCKER and WILSON, deft 'ts.

I hereby certify that pursuant to notice on the 4th day of May, 1880, at Leadville, state of Colorado, and pursuant to sec. 863, Revised Statutes U. S., page 163, the above plaintiff did call and did cause to appear before me, in the city of Leadville, in said district, the following witnesses to testify in behalf of the plaintiff in the above-entitled cause now depending in said Circuit Court, in the district aforesaid, wherein the above named are plaintiffs; and the said witness, being of lawful age and having been cautioned, did appear as follows, namely: John Montgomery, witness of the plaintiff in this suit, being first duly sworn, doth depose and
69 say: I am of lawful age; I know the plaintiff in this suit and defendant Sheriff Tucker; I was present, in April, 1879, when Sheriff Tucker and a number of other people tore down, demolished, and destroyed the buildings of the plaintiff on lot 30, in block 7, of Stevens and Leiter's addition to Leadville; I owned a house on lot 29, in same block, and went there to see my own property; plaintiff had occupied lots 31 and 32 all the winter of 1878 and 1879, and Amanda Martin occupied lot 30 all that winter; defendants and the mob with them, by force of arms, with pistols and deadly weapons, drove off the plaintiff and cleaned off the lots, and have held possession ever since; I live still on lot 29, in the same block; I come to Leadville in March, 1878, and have been mining more or less ever since.

(Signed) JOHN MONTGOMERY.

Subscribed and sworn to before me this 4th day of May, 1880.

[SEAL.] (Signed) JOSEPH D. BRASHEAR,
Notary Public.

70 WM. JONES, witness produced and sworn for the plaintiff in this cause, deposeth and saith: I know the plaintiff and have known him a year and a half; I know the defendants; I was present in April, 1879, when the defendants, with a crowd of people

armed with revolvers and other weapons, tore down the plaintiff's houses on lots 30, 31, and 32; I live just across the street from those lots; plaintiff had been in possession of those lots all that fall and winter, but since then the defendants have had possession of them, and have houses and unfinished log building; at the time that I speak of the defendant and the mob with them completely cleaned off the plaintiff's buildings and ejected him therefrom; I come to Leadville in December, 1878, and am in business here now.

(Signed) WILLIAM JONES.

Subscribed and sworn to before me this 4th day of May, 1880.

[SEAL.] (Signed) JOSEPH D. BRASHEAR,
Notary Public.

71 WM. LUNDY, witness produced for the plaintiff and sworn, doth depose and say: I know the plaintiff in this suit, and both the defendants by sight. I was present in April, 1879, when the defendants broke open the plaintiff's house on lot 32, in block 7. I saw them removing the furniture from the house and carrying it across on another lot. There was ½ dozen men, and there were many of them armed with revolvers. They carried everything out and took possession by force. The plaintiff had been in occupancy of these premises for two or three months prior to the forcible entry of the same by defendants, but has been out of possession thereof ever since, as witness personally knows. I have lived on lot No. 33, in block 7, ever since, and know all about it.

(Signed) WM. LUNDY.

Sworn and subscribed to before me this 5th day of May, 1880.

(Signed) JOSEPH D. BRASHEAR,
[SEAL.] *Notary Public.*

72 THEODORE ANTHONY, a witness produced on behalf of the plaintiffs, being first duly sworn, doth depose and say: I know the plaintiff, Frank Masser, and have known him for something over a year. I also know John Northrup, who was acting as agent for Stevens and Leiter in the sale of their lots in their placer mining claim since January 1st, 1879. In February or March, 1879, I happened at Northrup's office in Leadville; there met plaintiff in this suit. Mr. Masser made an application to Northrup for some lots. Mr. Northrup put him off, for what I cannot state. Masser stated to him that he was ready to take the lots. Northrup declined to give them to him. Immediately after this I advised Masser to employ Judge Pendery to go to Northrup and get his deeds.

(Signed) T. D. ANTHONY.

Sworn and subscribed to before me this 5th day of May, 1880.

(Signed) JOSEPH D. BRASHEAR,
[SEAL.] *Notary Public.*

JOHN F. HUMPHREYS, a witness produced by the plaintiff, being duly sworn, deposes and says: I have been a resident of Leadville since the 1st of February, 1879. I have been and still
73 am engaged in the real estate business on a large scale ever since my arrival here. I know the plaintiff in this suit and the defendants therein. I am familiar with lots 30, 31, 32, and 33, block 7, and I saw the same before the buildings thereon were destroyed in April, 1879, and I know the plaintiff as being in possession of said buildings previous to April, 1879. After the buildings thereon had been destroyed I visited the lots at the request of the plaintiff, and I know personally that he has been kept out of possession of lots 30, 31, and 32 in block 7 in Leadville since April, 1879. The use and occupation of those three lots from April, 1879, down to the present time is worth in my opinion $5,000.

(Signed) JOHN F. HUMPHREYS.

Subscribed and sworn to before me this 5th day of May, 1880.

(Signed) JOSEPH D. BRASHEAR,
[SEAL.] *Notary Public.*

EDGAR NICHOLS, a witness produced on behalf of plaintiff,
74 and being first duly sworn, doth depose and say: I have known the plaintiff for over a year and defendants both of them, and I live now and have lived on lot 28, in block 7, for nearly 2 years. The plaintiff in this suit lived near by me on lots 30, 31, and 32, in block 7, in the fall of 1878; he had a shanty or house on those premises, and in the spring of 1879 he put up some other shanties on the same premises, and in April, 1879, the defendant Wilson, and I think Sheriff Tucker, with several others, destroyed these buildings and removed them. Some of those men who were carrying off these buildings had revolvers and arms. The defendants removed the timbers from these lots, and they it on to lot 29 next to me. Since April, 1879, the defendant Wilson has claimed possession of said lots, and Masser, the plaintiff, has been kept out of possession ever since. I think the value of the damage to Masser for the use and occupation of the premises is fairly worth from $4,500 to $5,000.

(Signed) EDGAR NICHOLS.

75 Subscribed and sworn to before me this 5th day of May 1880.

[SEAL.] (Signed) JOSEPH D. BRASHEAR,
Notary Public.

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

I, Joseph D. Brashear, notary public in and for the said state of Colorado, pursuant to sec. 863, page 163, of the Revised Statutes of

the United States providing for the taking of depositions de bene esse, do hereby certify:

That the reason for taking the foregoing depositions is and the fact is that the testimony of said witnesses is material and necessary for the cause in the caption of the said deposition named, and the said witnesses do live, and did live at the time of the taking of said depositions, in Leadville, Lake county and state of Colorado, the same being more than a hundred miles from the city of Denver, where the court at which it is expected said cause will be tried was appointed by law to be held, to wit, more than 180 miles therefrom.

76 I further certify that the notification of time and place of taking said depositions signed by me was made at and served on the said defendants to be present at the taking of said depositions, copy of which notice is hereto appended, marked Exhibit "A" and made a part of my certificate. I further certify that on the 4th day of May, 1880, I was attended at my office by the plaintiff and his attorney, Geo. P. Bates, esq., and that the several witnesses, who were of sound mind and lawful age, were by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions were by me reduced to writing in the presents of the witnesses and from their statements, and after carefully reading the same to each witness they subscribed the same in my presents. I further certify that I have retained the said deposition in my possession, have sealed the same up, and have directed the same, with this my certificate of the reason aforesaid for taking said deposition, with my own hands, to the

77 court for which the same were taken.

I do further certify that I am not of counsel nor attorney for either of the parties in said deposition, or in any way interested the event of the said cause named in said caption.

And I do further certify that neither the defendants nor their attorneys attended the taking of said depositions, which were continued by me from the 4th to the 5th and 6th days of May, 1880, at my office in Leadville, at No. 201 Harrison avenue.

In testimony whereof, I have hereto set my hand and seal this 12th day of May, in the year 1880.

(Signed) JOSEPH D. BRASHEAR,

[SEAL.] *Notary Public.*

(Endorsed:) No. 438; Circuit Court U. S.; Frank Masser *vs.* L. R. Tucker and R. G. Wilson; depositions of Frank Masser et al. on behalf of plaintiff; opened, published, and filed June 9th, 1880; Edward F. Bishop, clerk.

To the introduction of which depositions the defendants,

78 by their counsel, then and there objected, because depositions themselves show that there was but three days' notice given, and for the reason that some parts of the deposition are immaterial; but the court overruled the objection, and allowed the said deposi-

tions to be admitted in evidence, which were read to the jury; to which ruling of the court in admitting said depositions defendants, by their counsel, then and there excepted.

The plaintiff here rested his case.

And thereupon the defendants, by their counsel, made a motion for judgment as of nonsuit, for the reason that the plaintiff shows himself out of court by his testimony, by his depositions filed in this case—which he has admitted—offered in connection with his cross-examination; also by the bill in chancery pending in this court, in which he claims only on his own showing an equitable title to this property—no legal title. That he has sworn both in his deposition and in his bill in equity that he was put in possession of these lots by John A.
79 Northrup, and that he was to pay for them at $25 a lot, after patent should issue; that after the patent issued he insisted upon the enforcement of his contract of sale; he insisted that although the contract was not in writing, that under that familiar rule that the taking actual possession under the verbal contract and putting improvements on land will do away with the statute of frauds so far as requiring the contract to be in writing, and therefore ask the chancellor to decree that Stevens and Leiter, who he swears have the legal title to these lots in this case, deed the legal title to him in pursuance of their contract, as equity and justice require, and he has no standing in this court whatever; that he cannot recover in his action by any showing of that peculiar character of legal title known as prior possession upon the public domain. But the court denied the motion for nonsuit; to which ruling and decision of the court in so denying said motion, the defendants by their counsel then
80 and there excepted. And thereupon the defendants gave in evidence on their behalf as follows, that is to say:

Defendants, by their counsel, here offer in evidence patent from the United States to Wm. H. Stevens and Levi Z. Leiter, dated November 5th, A. D. 1878, including the land in controversy, which is in the words and figures following, to wit:

General Land Office, No. 3003. } { Mineral Certificate No. 154.

The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter 6, title 32, there have been deposited in the general land office of the United States the plat and field notes of survey of the placer mining claim of William H. Stevens and Levi Z. Leiter, accompanied by the certificate of the register of the land office at Fairplay, in the state of Colorado, whereby it appears that in pursuance of the said Revised Satutes of the United States
81 the said William H. Stevens and Levi Z. Leiter did on the 2nd day of July, A. D. 1878, enter and pay for the said claim or premises, being mineral entry one hundred and fifty-four (154) in the series of said office, designated by the surveyor general as lot

number two hundred and seventy-one (271), embracing a portion of the unsurveyed public domain in the California mining district, in the county of Lake and state of Colorado, in the district of land subject to sale at Fairplay, containing two hundred and ninety-eight (298) acres and thirty-two ($\frac{32}{100}$) hundredths of an acre of land, according to the returns on file in the general land office, bounded, described, and platted as follows, with magnetic variations at fifteen (15) degrees east, to wit:

Beginning at corner No. 1 of survey No. 271, a granite stone 14x10x5 inches in size, marked "1–271," the same being corner No. 1 of survey No. 255, made for the placer claim of Thomas Starr, and corner No. 1 of survey No. 158, made for the placer claim of
82 the Oro Mining, Ditch, and Fluming Company, from which United States locating monument No. 1 bears south eighty-nine (89) degrees forty-five (45) minutes east, at the distance of four hundred and eighteen (418) feet; thence from said corner No. 1 north eighty-eight (88) degrees five (5) minutes east, fourteen hundred and twenty-eight and five-tenths (1428 5-10) feet to corner No. 2, a granite rock 16x12x3½ inches in size, marked "2–271," the same being corner No. 84 of said survey No. 255; thence north sixteen (16) degrees twenty (20) minutes west, six hundred and fifty-three (653) feet to corner No. 3, a granite rock 14x9x6 inches in size, marked "3–271," the same being corner No. 83 of said survey No. 255; thence north seventy-three (73) degrees forty (40) minutes east five hundred and thirty-eight and five-tenths (538 5-10) feet to center of the Oro Mining, Ditch, and Fluming Company's ditch fourteen hundred and eleven (1411) feet to corner No. 4, a granite rock 16 x 10 x 5 inches in size,
83 marked "4–271," the same being corner No. 82 of said survey No. 255; thence north twenty-nine (29) degrees forty (40) minutes west thirty (30) feet to road, three hundred and thirty and five-tenths (330 5-10) feet to corner No. 5, a granite rock 14x8x6 inches in size, marked "5–271," the same being corner No. 81 of said survey No. 255; thence north one (1) degree twenty (20) minutes west six hundred (600) feet to corner No. 6, a granite rock 15x10x6 inches in size, marked "6–271," the same being corner No. 80 of said survey No. 255; thence north thirteen (13) degrees ten (10) minutes west six (6) feet to south bank of creek thirty (30) feet to road, five hundred and eighty (580) feet to corner No. 19 of said survey No. 255, five hundred and ninety-two and two tenths (592 2-10) feet to corner No. 7, a porphyry rock 14x8x6 inches in size, marked "7–271;" thence south eighty-eight (88) degrees five (5) minutes west twenty-three hundred and ninety and one-tenth (2390 1–10) feet to the center of the Oro Mining, Ditch and Flum-
84 ing Company's ditch three thousand and seventy and one-tenth (3070 1-10) feet to corner No. 8, a granite rock 12x8x6 inches in size, marked "8–271," from which a pine eight (8) inches in diameter marked "8–271" bears north four (4) degrees twenty-five (25) minutes west, at the distance of twenty-two and five-tenths (22

5-10) feet, and a pine twelve (12) inches in diameter, marked "8–271," bears north thirty-nine (39) degrees twenty-nine (29) minutes west, at the distance of twenty-one and five tenths (21 5-10) feet; thence from said corner No. 8 north seventeen (17) degrees and fifty (50) minutes west one hundred and twenty and one-tenth (120 1-10) feet to corner No. 9, a granite rock 12x8x6 inches in size, marked "9–271," from which a pine seven (7) inches in diameter, marked "9–271," bears north forty-two (42) degrees and thirty (30) minutes west at the distance of five (5) feet, and a pine ten (10) in diameter, marked "9–271," bears south sixty-seven (67) degrees thirty-four (34) minutes east at the distance of three and nine-tenths (3 9-10) feet;
85 thence from said corner No. 9 south seventy-two (72) degrees ten (10) minutes west, twenty-six hundred and five and three-tenths (2605 3-10) feet to corner No. 10, a granite rock 12 x 8 x 8 inches in size marked "10–271;" thence south seventeen (17) degrees fifty (50) minutes east, twenty-six hundred and fifty-one and seven-tenths (2651 7-10) feet to corner No. 11, a granite rock 12 x 6 x 5 inches in size, marked "12–271;" thence north eighty-five (85) degrees east, one hundred and eight (108) feet to corner No. 12, a granite rock 12 x 6 x 5 inches in size, marked "12–271," the same being corner No. 63 of said survey No. 158; thence north seventy-two (72) degrees ten minutes east, eleven hundred and forty-three (1143) feet to the center of Stray-horse creek, twenty-five hundred (2500) feet to the place of beginning, containing two hundred and ninety-eight (298) acres and thirty-two hundredths (32-100) of an acre of land, more or less, as represented by yellow shading in the following plat, and commonly known as the Stevens and Leiter placer mine.

[Here follows map marked page 86.]

87 *Know* know ye, that the United States of America, in consideration of the premises and in conformity with the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said Wm. H. Stevens and Levi Z Leiter, and to their heirs and assigns, the said placer mining premises, above described as lot No. 271, embracing a portion of the unsurveyed public domain, to have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Wm. H. Stevens and Levi Z. Leiter, and to their heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said lot No. 271, as hereinbefore described, and to any veins or lodes of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other val-
88 uable deposits, which may hereafter be discovered within said

limits, and which are not claimed or known to exist at the date hereof.

Second. That should any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises at the date hereof, the same is expressly excepted and excluded from these presents.

Third. That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, for the purpose of extracting and removing the ore from such vein, lode, or deposit, should the same or any part thereof be found to penetrate, intersect, pass through, or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural,
89 manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decision of courts.

Fifth. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

In testimony whereof I, Rutherford B. Hayes, President of the United States of America, hath caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the hundred and fourth.

(SEAL.) By the President: R. B. HAYES.

90 By (Signed) WM. H. CROOK,
Secretary.

S. W. CLARK,
Recorder of the General Land Office.

Recorded vol. 37, pages 151 to 156, inclusive.

To the introduction of which patent plaintiff objected, on the ground that it is void upon its face, because it shows that two individuals have patented in a consolidated mining claim 298 acres; but the court overruled the objection, and the said patent was read in evidence to the jury.

Defendants by their counsel next offered in evidence a power of attorney from Stevens and Leiter to Waldemar Arens, acknowledged on the 10th day of October; also deed from Waldemar Arens, as attorney in fact of Stevens and Leiter, to these defendants, of lots 30, 31, and 32, block 7, Stevens and Leiter's subdivision, survey 271, recorded October 14th; also a fac simile of plat as filed in the

land office, referred to in the deeds. (Stevens and Leiter's subdivision.)

To the introduction of said power of attorney, deed, and
91 plat plaintiff made no objection, and admitted that the claim of title from Stevens and Leiter to these defendants was correct and that said documents covered the ground in controversy, and the said power of attorney, deed and were read to the jury.

And thereupon the defendants, by their counsel, read in evidence the deposition of William A. Northrup taken in this cause, which is in the words and figures following, to wit:

United States of America. Circuit Court of the United States for the eighth judicial circuit and district of Colorado.

FRANK MOSSER, pl't'ff,
vs.
L. R. TUCKER and WILLIAM J. WILSON, defendants.

WILLIAM A. NORTHRUP, a witness produced and sworn on the part of the defendants, doth depose and say that he knows defendants in this suit and is well acquainted with the property in controversy and described in the plaintiff's complaint in the above-entitled
92 cause, and that the same is a part and parcel of survey No. 271 claimed by Stevens and Leiter; that in the fall of 1877 said Stevens and Leiter built their office on the corner of Pine and Second streets, which was within the boundaries of their said claim survey No. 271; that said office and barn was all the buildings that the said Stevens and Leiter had in the way of improvements upon the said claim; that in the way of mining improvements said Stevens and Leiter had several shafts sunk upon said claim No. 271.

Affiant further says that in the year of 1877 there was no other claimant to this property that he knows of, except Stevens and Leiter; that the office of Stevens and Leiter aforesaid was finished some time in the fall of 1877; that no improvements were made in the vicinity of the lots in controversy up to March, A. D. 1878; that Stevens and Leiter claim the said lots survey No. 271 as a placer claim, and that a portion of said claim was claimed by adverse parties, but Stevens and Leiter bought them out; that to my
93 knowledge the plaintiff in this suit did not make any claim upon this placer ground up to the time of the application for this patent.

(Signed) W. A. NORTHRUP.

Subscribed and sworn to before me this 20th day of October, A. D. 1880.

[SEAL.] (Signed) M. ADAMS,
Notary Public.

It is stipulated and agreed by and between the plaintiff and the defendants that the foregoing deposition may be read in evidence on

the trial of the above cause and also in the case of Frank Mosser *vs.* Martha J. Henry and John J. Henry without objection, except as to competency.

(Signed) GEO. P. BATES,
Pl'ff's Atty.
WESTON & ROWELL,
Def'ts' Att'ys.

Oct. 20th, 1880.

(Indorsed:) 438; Frank Mosser *vs.* L. R. Tucker et al.; Circuit Court; deposition of W. A. Northrup ac. defendant; filed October 22d, 1880; Edward F. Bishop, clerk.

LEDYARD R. TUCKER, being called and sworn for defendants, testified as follows:

Question. Where do you reside, Mr. Tucker?

Answer. In Leadville.

Q. What is your occupation?

A. I am acting sheriff there at present.

94 Q. Of Lake county?

A. Yes, sir.

Q. What relation do you sustain to this suit?

A. I am defendant, one of the defendants.

Q. Describe to the jury this building that has been talked about here, that was so valuable for renting purposes, the first building that was on the premises.

A. As near as I recollect the building it was a slab shanty, I would judge ten by fourteen, not larger than that; a very low structure; probably the door was five feet and a half high, about that, it may have been six, I don't think it; I think we had to stoop to get into it; it was very loosely put up; I believe there was a little slab shed; I think it may have been about five feet wide or six, might have been eight; it was a sloping roof.

Q. On which one of these lots, if either, was that built?

A. That was partly on lot 32 and 33; it was partly on one lot we had no claim to.

Q. Part of it you say was on lot 32?

A. It seemed to be built on the line of the two lots.

Q. Tell the jury whether or not you were present on the

95 day he describes having his building torn down.

A. Not when it was torn down.

Q. Tell whether or not you participated in tearing down the building.

A. I did not; I did not see the house torn down.

Q. Tell the jury whether or not there was any fencing around these lots.

A. Yes, sir; I do not remember how long before this transaction; my impression is, probably two or three weeks; it was before this trouble, I know.

Q. Were you about the premises before this day?

A. Yes, sir; I was there, had talked with Mr. Masser once before, I believe.

Q. How was it with regard to the fence in point of time, as regards the second building?

A. The fence was up before that second building; I don't know when it went up, unless it was in the night.

Q. Do you know who put this fencing around there?

A. Yes, sir; Mr. Wilson did, or had it put up; him and I.

Q. Tell the jury what was the fair market value of those three lots, 30, 31, and 32, at the time of this ejectment.

96 A. Well, the three lots were worth in the market at that time between five and six hundred dollars—not over.

Q. What would be the fair rental value of those lots in the condition they were the day you took possession?

A. Well, I don't know what the lots—the improvements on them were of no good, no account for any one.

Q. Tell the jury whether this house was fit to be occupied, the first building.

A. That was not on the lots—only a portion; the other was not completed—was not worth anything; no door in it; don't think the roof was on; it was not battened yet.

Q. How large a building was that?

A. It was about the same size as the other; about ten by twelve, I judge—ten by fourteen. I don't think it was larger than that.

Q. Tell the jury whether or not this building, partly on lot 32, partly on somebody's else lot, was torn down at that time.

A. No, sir; it was not. It stood there for a while; I don't remember whether he moved it off or whether it was done through our orders.

Q. Did you molest that building?

97 A. There was some of our parties went into the house; I think Mosser was not there at the time; they didn't break the door open and hold possession; I ain't certain. I think it was at his suggestion the house was moved over to lot 33; the other house was torn down—the slab structure.

Q. At the time you made this purchase had you any knowledge there was any one living on these lots?

A. No, sir; I understood there was a colored lady living in this house. I was given to understand she was willing to just take the cost of her improvements, which I was willing to pay.

Q. At the time was there anything to indicate any possession on lots 30, 31, and 32?

A. There was nothing except this little slab structure part on 32, nothing. I went to see Mosser about that, and ask him to let go, build no more; we would not bother him any more.

Q. You say you made an agreement with him he should not be disturbed in the building partly on 31 and 32?

A. No, sir; I didn't make no agreement; I made that proposition to him.

98 Q. How long was that after you purchased?

A. I don't remember; it must have been a month or six weeks before I knew there was any trouble about it.

Q. It has been stated that you were arrested for your participation in that; tell the court and jury whether that is true.

A. It seems to me there was a warrant out; I don't know whether I was arrested or not; I know if I was no case was made. There was a warrant out for me, and it was served. I know it didn't stand in the court.

Q. You say it was some time after you paid for the conveyance and took the land before you understood that Mosser set up any claim to it?

A. Yes, sir.

R. G. WILSON, being called and sworn for defendants, testified as follows:

Question. What is your name?

Answer. R. G. Wilson.

Q. Where do you reside?

A. In Leadville.

Q. What relation do you sustain to this suit now on trial?

A. One of the defendants.

Q. Tell the jury whether or not at the time you purchased, or at any time before that, you had any notice or knowledge he, Mr. Mosser here, the plaintiff, claimed any title or was in posses-

99 sion of any of these lots.

A. We understood when we purchased that piece of ground that there were no claimants to it whatever. It was so represented to us, and we had no trouble about it for some time. I went to examine it one day; I asked him what he was doing; told him I rather thought he was mistaken. I believe I worded it that way.

Q. Did you suppose at that time that this building was on your premises at all?

A. At first we didn't know until I got a survey.

Q. What did that prove with regard to where his first building was?

A. The old building stood then partially on lot 32, very little; most of it on lot 33, which we had no claim to; I told Mr. Mosser about it; some time after that Mr. Mosser and I had a conversation in regards to a building that he was putting some lumber on the ground for, and I went to see him and asked him what he was doing, and I think at the time he was partially erecting a small building or laying a foundation, and I told him then he better not erect a

100 building there; and that evening he and I came to a mutual agreement that he would do nothing until further notice until he and I seen who would own the land, and the next morning I went back there he had a building very nearly erected between ten and

twelve o'clock in the forenoon; whether or not it would be possible to build it with the help he had, he did mighty good work. I accused him then, if he will remember, of building it in the night; I told him then I would like to talk with him; he says, "You can get off the premises"—just that way; I talked something about it being useless—if he thought it would stand; I told him I would put him off; he says, "Well, go to law about it"—that way—"let the law take its course;" I told him he was working there for nothing; that I would take it off.

Q. Do you know anything about a fence being put around this land?

A. Yes, sir; I put a fence around it, supposing it to be thirty, thirty-one, and thirty-two; on the next survey it proved to be a little on thirty-three—my east fence.

101 Q. How long was that before the new building was put up?

A. Well, it was some time before it.

Q. What, if anything, was there on 30, 31, and 32 by way of improvements?

A. Nothing but the house Mr. Mosser then lived in, and it was partially on 32, that is, the one that has been spoken about as the first house; that is all there was on any of the lots, excepting there might have been a shed-barn partially on 32, but intended to be on 33, on a line with the house.

Q. At the time you built this fence, you say Mosser was living there?

A. In what we call the first house; when I come to put up the second fence the first fence had been torn down; when I come to make a good, substantial fence around the property Mosser then was living in the old house.

Q. Did he make any objections at that time, or make any claim of possessory right to those lots?

A. Not any whatever.

Q. Did you know at that time that he made any claim to those lots?

A. Not a bit whatever.

102 Q. State to the jury what was the value of the house.

A. I could not say it was a very valuable horse; rough slab house, either ten by twelve or ten by fourteen; I couldn't say which; it had a place for a door; had some boys to live in it, to hold it, keep me from getting possession.

Q. What do you think it would cost to build it?

A. I don't think it would exceed twenty-five dollars.

Q. Tell the jury whether or not that could be rented; if it could be occupied.

A. No, sir; it was but a little, upright slab building, four posts to hold it together; I know we cut the posts down; the first house was a rough-board slab building; little, small shed; board roofs, sloping down almost to the ground in the rear; one small door; without a

floor in it; I don't think the two buildings would exceed sixty dollars.

Q. Tell the jury what that property could have been rented for at the time you went there.

A. Probably it was not in any demand then at all.

Q. Is there any chance to rent vacant lots in Leadville; was there then?

A. No, sir.

103 Q. You say those buildings were not such as anybody would want to hire?

A. No; they were not of much value.

Q. What is the disposition up there—to rent a lot or buy?

A. Generally to buy.

Q. Do you know of any one renting a lot?

A. I do not.

Q. Tell the jury how soon after you discovered this building was it you went there to put it off into the street.

A. It was before he had it completed.

Q. You have heard what he said about not having a gun; tell whether that is true.

A. I will have to contradict Mr. Mosser; he had a gun, and from hearsay he made threats of using it. One of the boys, Mr. Miller, was with me at the building, picked up the gun.

Q. Did you fellows display any fire-arms there?

A. Well, they could have been seen; yes, sir; I had one in my pocket.

Q. Did Mr. Miller have one in his pocket?

A. Yes, sir.

Q. Did you take them out?

A. I asked Mr. Mosser to get down off the house; I believe he was nailing some boards; told him to come down; he would

104 not until we chopped the posts out; let it fall; we proceeded to chop the posts down; in the meantime he got off the house; let it fall.

Q. Up to the time you found him building this house there, who did you consider was in possession of lots 30, 31, and 32?

A. Tucker and myself were in possession.

(Objected to; objection sustained.)

Q. Who was in possession at the time you found him?

A. No one; Mr. Mosser's house, as I stated before, was partially on lot 32; he could not claim lot 32 with it.

Q. At the time you went there, how was it in regard to the fence you put up there?

A. The fence was there.

Q. The same as you put it there?

A. Well, it might have been knocked down in places.

Q. Up to that time who had been in possession of lots 30 and 31?

A. There was no one in possession; we were the possessors ourselves.

Q. Did you exercise all the rights of ownership over it you would over any vacant lots?

A. I did; I tried to convince Mosser several times; he would not listen to me; he told me if I wanted possession to go to law
105 and let the law take its course. This building was made to cover the two lots; it was a little on 32.

Q. Mr. Mosser has spoken about having three buildings there at the time you came; tell the jury whether there was anything else except these two you have described.

A. No other buildings except one very small one with a dirt floor, bunk, sheet-iron stove, about the contents of the house there he was erecting; as I said before the stable was then on the alley almost. Partially on the lots on the rear of 32, principally on the alley very small stable; no door to that; close to the ground. It was not completed. Mr. Tucker was not on the ground at all; had nothing to do with it whatever.

On cross-examination this witness testified:

Q. You say there was nobody but yourself and another man?

A. We was the only two that went there with the intention of removing the building; before we got through there was lots helping us—hundreds.

Q. It didn't need more than two of you to mob an old
106 man; what did you go there with revolvers for?

A. Mr. Mosser said the previous day if we came to take forcible possession of that place he would meet us.

Q. You went there to fight him, did you?

A. No, sir; not him particularly; we went there to defend ourselves if necessary.

Q. You swear positively that Mr. Tucker was not there?

A. Yes, sir; Mr. Jack Miller and I done the work ourselves.

Q. Who offered to help you gratuitously to mob the old man; can you name any of them?

COURT: We do not want to go into that; question is excluded.

——— GILBERT, being called and sworn for defendants, testified as follows:

Question. Where do you reside?

Answer. In Leadville.

Q. Where did you reside in the fall of 1877 and winter of 1878?

A. In Leadville.

Q. You have heard Mr. Northrup's deposition read here, have you?

A. No, sir.

Q. Tell the jury if during that time you built a building for Stevens and Leiter on their placer claim.

A. There was no buildings on Stevens and Leiter's claim, what was then known as Stevens and Leiter's, at the time that I
107 built a building for Stevens and Leiter costing over $1,100, with the exception of a log cabin owned by Messrs. Morton,

situated on what is now known as Second street, then known as State street, and a saloon owned by Wm. Nye, partly on old Casey's town site and partly on Stevens and Leiter's. That was on the 20th of January, 1878.

Q. Are you acquainted with this part of the town here—Pine and what was then Park street? [Handing witness plat.]

A. Yes.

Q. Tell the jury whether—at the time you did this work—whether there were any other buildings on these lots No. 30, 31, and 32 there.

A. There was not; no improvement of any kind. At that time my business was builder and contractor.

Q. What are you doing now?

A. I am on the jury now.

Cross-question: I understand right about the dates—24th of January, 1878?

A. Yes, sir.

The defendants here rested their case. And thereupon the plaintiff gave in evidence on his behalf rebuttal as follows; that is to say:

108 Plaintiff, by his counsel, now offers in evidence the certified copy of the record of the land office in regard to this patent from the United States to Stevens and Leiter, to show, as far as the dates are concerned, that the last date—the oldest date claimed—is the 21st day of September, A. D. 1874; that none of these claims go back prior to that date, and that is the oldest claim for which this patent was issued; that it is one consolidated claim, one survey, one notice, one plat, and that it is a patent for 298 acres and a fraction by two persons; therefore the patent is void, which is in the words and figures following, to wit:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January* 29, 1880.

I, J. M. Armstrong, acting commissioner of the general land office, do hereby certify that the annexed copies of papers in case of the claim of Wm. H. Stevens and Levi Z. Leiter upon their placer mine, on Fairplay, Colorado, mineral entry No. 154, in California mining district, Lake county, Colorado, are true and literal exemplifications of the originals now on file in this office.

109 In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) J. M. ARMSTRONG,
[SEAL.] *Acting Commissioner of the General Land Office.*

Application for Patent.

STATE OF COLORADO, } ss.
County of Lake, }

Application for Patent for the Stevens and Leiter Placer Mining Claim, Survey No. 271.

To the register and receiver of the U. S. land office at Fairplay, Colorado.

WILLIAM H. STEVENS, being first duly sworn according to law, deposes and says: That in virtue of a compliance with the mining rules, regulations, and customs by himself (the said William H. Stevens) and his co-claimant, Levi Z. Leiter, and their grantors, the said Stevens and Leiter, applicants for patent herein, have become the owners of and in possession of the said placer claim, said claim being situated in California mining district, county of Lake
110 and state of Colorado, and being more particularly set forth and described in the official field notes of survey thereof, hereto attached, dated the fifth day of January, A. D. 1878, and in the official plat of said survey, now posted conspicuously on said premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself and his said co-claimant to said mining claim, so surveyed and platted, are substantially as follows, to wit: That on or about the 21st day of September, A. D. 1874, A. B. Wood, John B. Crawford, R. J. Wood, and Joseph H. Wood, four citizens of the United States, discovered and located and on September 22nd, A. D. 1874, recorded in the recorder's office of said Lake county placer claims, known as placer claims No. 1 P and No. 2 P; and that afterwards, and on or about the 26th day of October, A. D. 1874, the said A. B. Wood, John B. Crawford, R. J. Wood, and Joseph W. Wood discovered and located the placer claims known as No. 3 P and No. 4 P, and on October 28th, A. D. 1874, recorded in said recorder's office
111 said placer claim No. 3 P, and on October 30th, A. D. 1874, recorded in said office said placer claim No. 4 P. Said claims being recorded in said recorder's office as follows, to wit: No. 1 P, in book 9, page 59; No. 2 P, in book 9, page 60; No. 3 P, in book 9, page 92, and No. 4 P, in book 9, page 93, and being so possessed of the said placer claims they, the said A. B. Wood, John B. Crawford, R. J. Wood, and Joseph H. Wood, made divers and sundry conveyances thereof, which are more particularly set forth in the abstract of title hereto annexed, by and under which that part of said claims for which patent is herein applied for became and is now vested in and owned by the said William H. Stevens and Levi Z Leiter, which will more fully appear by reference to the copies of original location records and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and improvements made upon said claims by the applicants herein and their grantors being equal to the sum of five hundred dollars in gold coin of the United

States. In consideration of which facts and in conformity
112 with the provisions of the act of Congress approved May 10, 1872, entitled "An act to promote the development of the mining resources of the United States," application is hereby made for and in behalf of said William H. Stevens and Levi Z. Leiter for a patent from the Government of the United States for the said placer mining claim so officially surveyed and platted.

(Signed) WM. H. STEVENS.

Subscribed and sworn to before me this 25th day of March, A. D. 1878, and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field notes of survey of the placer mining claim known as survey No. 271, was read and examined by him before his signature was affixed thereto and the oath made by him.

(Signed) W. A. NORTHRUP,
[SEAL.] *Notary Public in and for Lake county, Colorado.*

Know all men by these presents that I, Levi Z. Leiter, do hereby constitute and appoint William H. Stevens as my attorney
113 in fact for me and in my name to make application to the United States for the entry and purchase of certain government lands in California mining district, Lake county, state of Colorado, known as placer claims No. 1 P, No. 2 P, No. 3 P, and No. 4 P, or any part thereof, and to have the same surveyed, and to take any and all steps that may be necessary to procure from the government of the United States a patent to said lands and premises, granting the same to me and my co-owner, the said William H. Stevens, and to do all other acts appertaining to the said survey and entry aforesaid as I myself could do by my own acts and in my own proper person.

In witness whereof, I have hereunto set my hand and seal this 12th day of January, A. D. 1878.

(Signed) LEVI Z. LEITER. (SEAL.)

STATE OF ILLINOIS, } *ss.*
County of Cook, }

I, Edward Nevers, a notary public in and for the said county of Cook and state of Illinois, do hereby certify that Levi Z.
114 Leiter, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth. Given under my hand and notarial seal this 12th day of January, A. D. 1878.

[SEAL.] (Signed) EDWARD NEVERS,
Notary Public.

Survey No. 271, district No. 3.

Transcript of filed notes of the survey of the claim of Wm. H. Stevens and Levi Z. Leiter upon the Stevens and Leiter lode placer in California mining district, Lake county, Colorado, surveyed by Charles B. Baldwin, U. S. deputy surveyor. Survey began January 1st, 1878, and completed January 4th, 1878.

Feet.	
	Beginning at corner No. 1, a granite st. 14 x 10 x 5 in. planted 7 in. deep, marked 1–271, from which U. S. L. M. No. 1, located by J. S. Titcomb, U. S. deputy mineral
115	surveyor, bears S. 89 deg. 45 min. E. 418 feet, Mt. Sheridan bears S. 67 deg. 47 min. E., Mt. Elbert bears S. 43 deg. 56 min. W., corner No. 1—(same as corner No. 1–255 and cor. No. 1 of placer claims in California gulch, owned by Oro Mg, Ditch and Fl'g Co.'s sur. 158.) Thence north 88 deg. 5 min. E.
1428.5	To corner No. 2, a granite rock 16x12x3½ in. planted 8 in. deep, marked 2–271 (same as cor. 84–255); thence N. 16 deg. 20 min. W.
653	To cor. No. 3, a granite rock 4x9x6 in. planted 8 in. deep, marked 3–271 (same as cor. No. 83–255); thence No. 73 deg. 40 min. E.
538.5	To center of Oro Mg., Ditch & Flg. Co.'s ditch 13 ft. wide.
1411	To cor. No. 4, a granite rock 16x10x5 in. planted 7 in. deep, marked 4–271 (same as cor. 82–255); thence N. 29 deg. 40 min. W.
30	To road.
330.5	To cor. No. 5, a granite rock 14x8x6 in. planted 9 in. deep, marked 5–271 (same as corner No. 81–255); thence N. 1 deg. 20 min. W. 600 feet.
116	To cor. No. 6, a granite rock 15x10x6 in. planted 8 in. deep, marked 6–271 (same as cor. No. 80–255); thence N. 13 deg. 10 min. W.
6	To south bank of creek 4 ft. wide.
30	To road.
580	To corner No. 79–255.
592.2	To cor. No. 7, a porphyry rock 14x8x6 in. planted 7 in. deep, marked 7–271; thence S. 88 deg. 5 min. W.
2390.1	To centre of Oro Co.'s ditch 13 ft. wide.
3070.1	To cor. No. 8, a granite rock 12x8x6 in. planted 6 in. deep, marked 8–271, from which a pine 8 in. dia. bears N. 4 deg. 25 min. W. 22 5-10 feet, marked 8–271, a pine 12 in. dia. bears N. 39 deg. 29 min. W. 215 ft. marked 8–271; thence N. 17 deg. 50 min. W.
120.1	To cor. No. 9, a granite rock 12x8x6 in. planted 6 in. deep, marked 9–271, from which a pine 7 in. di. bears N. 42 deg. 30 min., W. 5 feet, marked 9–271; a pine 10 in. di.

Feet.

bears S. 67 deg. 34 min. E. 39 ft., marked 9–271; thence S. 72 deg. 10 min. W.

2605.3 To corner No. 10, a granite rock 12x8x8 in. planted 6 in. deep, marked 10–271 (from which Mt. Elbert bears S. 39
117 deg. 39 min. W., Mt. Massive S. 65 deg. 7 min. W.;) thence S. 17 deg. 50 min. E.

2651.7 To cor. No. 11, a granite rock 12x6x5 in. planted 6 in. deep, marked 11–271; thence N. 85 deg. E.

108 To cor. No. 12, a granite rock 12x6x5 in. planted 6 in deep, marked 12–271 (same as cor. No. 63 of claims in California gulch owned by Oro M'g, Ditch and Fl'g Co.;) thence N. 72 deg. 10 min E.

1143 To center of Stray Horse creek, 4 ft. wide.

2500 To cor. No. 1, the place of beginning, containing 298.319 acres, more or less; variations in all courses 15 deg. E. The improvements are: 1 house 20x32 ft., 16 ft. posts, 1 privy 4x6 ft. The value of said improvements, together with the labor expended on the said claim by the claimants, is not less than five hundred dollars, and amounts to eight hundred dollars.

List of the names of individuals employed to assist in running, measuring, and marking the lines and corners described in the foregoing field-notes of the survey of the claim of William H. Stevens and Levi Z. Leiter upon the Stevens and Leiter "placer" in
118 California mining district, Lake county, Colorado.

(Signed) A. M. RUCKER.
" CHARLEY DORSEY.

We hereby certify that we assisted Charles C. Baldwin U. S. deputy mineral surveyor, in surveying the exterior boundaries and marking the corners of the claim of Wm. H. Stevens and Levi Z. Leiter upon the Stevens and Leiter "placer" claim in California mining district, Lake county, Colorado, and that said survey had been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according the instructions furnished the surveyor general.

(Signed) A. M. RUCKER.
" CHARLEY DORSEY.

Subscribed and sworn to by the above-named person before me this 5th day of January, A. D. 1878.

(Signed) W. A. NORTHRUP,
[SEAL.] *Notary Public.*

I, Charles C. Baldwin, deputy U. S. mineral surveyor, do solemnly swear that in pursuance of an order from William L. Camp-
119 bell, surveyor general of the public lands in the state of Colorado, bearing date the 14th of December, 1877, and in strict

conformity to the laws of the United States and instructions furnished by said surveyor general, I have faithfully surveyed the claim of Wm. H. Stevens and Levi Z. Leiter upon the Stevens and Leiter "placer" claim, in California mining district, Lake county, Colorado, and do further solemnly swear that the foregoing are the true and original field notes of such survey.

(Signed) C. C. BALDWIN,
U. S. Deputy Mineral Surveyor.

Subscribed by said Charles C. Baldwin, U. S. deputy mineral surveyor, and sworn to before me this 5th day of January, A. D. 1878.

[SEAL.] (Signed) W. A. NORTHRUP,
Notary Public.

I certify that the foregoing transcript of the field notes of the survey of the mining claim of W. H. Stevens and Levi Z. Leiter, situate in California mining district, county of Lake and state of Colorado, has been correctly copied from the original notes of said
120 survey on file in this office; that said field notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof. I further certify that the plat thereof filed in the U. S. land office at Fairplay is correct and in conformity with the foregoing field notes.

(Signed) WILLIAM L. CAMPBELL,
U. S. Surveyor General of Colorado.

U. S. SURVEYOR GENERAL'S OFFICE,
Denver, Colorado, March 5th, 1878.

Abstract of title to placer claim known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, situate in California mining district, county of Lake, state of Colorado.

Book 9, page 59.]

A. B. Wood et al. to claim No. 1 P, placer mines.

121 Be it known that A. B. Wood, John B. Crawford, R. J. Wood, and Joseph W. Wood, four citizens of the United States, locate, claim, and record eighty acres of placer land, situated to the north of California gulch, and more fully described as follows, to wit: From U. S. locating monument No. 1, established by J. S. Titcomb, U. S. min. surveyor, N. 89 deg. 45 min. W., variation 15 deg. E. 418 ft., to corner No. 1, beginning, being a post in mound of stones, from which Mt. Sheridan bears S. 68 deg. E., Mt. Elbert S. 42 deg. 45 min. W., and a sharp peak on N. part of Grand Mt. S. 72 deg. W., being also No. 1 of claims in California gulch, now held by the Oro Mg., Ditch and Fluming Co.; thence N.

88 deg. 05 min. E. 2453 feet to post in mound of stones cor. No. 2, 8 feet west of Starr's mining ditch, from which a pine 10 in. diam. bears N. 0 deg. 20 min. W. 15 feet; a pine 14 in. dia. bears N. 36 deg. 35 min. W. 45 feet; thence N. 9 deg. 05 min. W. 660 feet, to post in mound of stones cor. No. 3, 12 feet W. of aforesaid ditch, from which a pine 12 in dia. bears N. 71 deg. 10 min. E. 7½
122 feet, a pine 11 in. dia. bears N. 28 deg. 30 min., W. 9 feet; thence N. 27 deg. 35 min. E. 355 feet, to post in mound of stones, corner No. 4, 8 feet from the aforesaid ditch, from which a pine 7 in. dia. bears N. 26 deg. 20 min. E. 4 feet, a pine 10 in. diam. bears S. 1 deg. 20 min., E. 7 feet; thence N. 29 deg. 40 min., W. 365 feet, to post in mound of stones, corner No. 5; thence S. 88 deg. 05 min. W. 2832.5 feet to post in mound of stones, corner No. 6; thence S. 17 deg. 50 min. E. 1339.1 feet to corner No. 1, place of beginning, containing 80 acres, situated in Lake county, Colorado territory. Sept. 21, 1874.

Recorded September 22nd, A. D. 1874, at 2 o'clock p. m.

Book 9, page 60.]

A. B. Wood et al. to claim No. 2 P, placer claim.

Be it known that A. B. Wood, John B. Crawford, R. J. Wood, and Jos. W. Wood, four citizens of the United States, locate, claim, and record eighty acres of placer land situated to the north of California gulch, and more fully described as follows, to wit: From U. S. locating monument
123 No. 1, established by J. S. Titcomb, U. S. min. surveyor, N. 89 deg. 45 min. W.; variation, 15 deg. E., 418 feet to corner No. 1, beginning, being a post in mound of stones, from which Mt. Sheridan bears S. 68 deg. E., Mt. Elbert bears S. 42 deg. 45 min. W., and sharp peak on N. part of Grand Mt. S. 72 deg. W., being also corner No. 1 of claims in California gulch now held by the Oro Mining, Ditch, and Fluming Co.; also corner No. 1 of another claim of A. B. Wood and others, being to the east (No. 1 P); thence S. 72 deg. 10 min. W., along the N. line of the first above named claim, 2,500 feet to post in mound of stones, corner No. 2 being also corner No. 63 of first above named claims; thence S. 85 deg. W., along the N. line of first above named claim 108 feet to post in mound of stones, corner No. 3; thence N. 17 deg. 50 min. W., 1,314.1 feet to post in mound of stones, corner No. 4; thence N. 72 deg. 10 min. E., 2,605.3 feet to post in mound of stones, corner No. 5, being also corner No. 6 of the other claim of A. B. Wood and others above named (No. 1 P); thence S. 17 deg. 50 min. E., along the W. line of the last named claim 1,338.1 feet to corner No. 1, to place
124 of beginning, containing eighty acres, situated in Lake county, Colorado territory.

Sept. 21, 1874.

Recorded September 22nd, A. D. 1874, at 2 o'clock p. m.

Claim No. 3 P.

Book 9, page 92.]

Be it known that A. B. Wood, John B. Crawford, R. J. Wood and Jos. W. Wood, four citizens of the United States, locate, claim, and record eighty acres of placer land, situated to the north of California gulch, and more fully described as follows, to wit: From U. S. locating monument No. 1, established by J. S. Titcomb, U. S. min. surveyor, N. 32 deg. 59 min. W., variation 15 deg. E., 1,520.2 feet, to post in mound of stones, corner No. 1, being also corner No. 6 of A. B. Wood and others' claim No. 1 P., and also corner No. 5 of A. B. Wood and others' claim No. 2 P., from which a pine 14 in. diam. bears S. 34 deg. 35 min. E. 12 feet, a pine 14 in. diam. S. 28 deg. W. 7½ feet; thence N. 88 deg. 05 min. E., along the line of the first above named claim, 2,832.5 feet to post in mound of stones, corner No. 2, 20 feet from the Starr's mining ditch, being also No. 5 of said claim No. 1 P., from which a pine 5 in. in diam. bears S. 36 deg. 10 min. E. 18 feet, a pine 4 in.
125 diam. bears N. 2 deg. 30 min. E. 18 feet; Round Top Mountain, S. of Twin Lakes, bears S. 25 deg. W.; Mt. N. of Lake Park bears N. 58 deg. 35 min. W.; thence N. 1 deg. 20 min. W., 600 feet, to post in mound of stones, corner No. 3, 28 feet from ditch, from which a pine 12 in. diam. bears N. 62 deg. 45 min. E. 23 feet; thence N. 13 deg. 10 min. W. 582 feet, to post in mound of stones, corner No. 4; thence S. 88 deg. 15 min. W. 3,058 feet, to post in mound of stones, corner No. 5; thence S. 17 deg. 50 min. E. 1,217.5 feet, to corner No. 1, place of beginning, containing eighty acres of land, adjoining claimants A. B. Wood and others to the south, situated in California mining district, Lake county, Colorado territory.

October 26th, 1874.

Recorded October 28th, A. D. 1878, at 7 p. m.

Claim No. 4 P.

A. B. Wood et al. to certificate placer claims.

Be it known that A. B. Wood, John B. Crawford, R. J. Wood, and Jos. W. Wood, four citizens of the United States, locate,
126 claim, and record eighty acres of placer land, situated to the north of California gulch, and more fully described as follows, to wit: From U. S. locating monument No. 1, established by J. S. Titcomb, U. S. min. surveyor, N. 32 deg. 59 min. W., variation 15 deg. E., 1,520.7 feet, to post in mound of stones, corner No. 1, being also corner No. 6 of Wood and others claim No. 1 P., and corner No. 5 of Wood and others No. 2 P., and corner No. 1 of Wood and others claim No. 3 P., from which a pine 14 in. diam. bears S. 34 deg. 45 min. E. 12 feet; a pine 14 in. diam. bears S. 28 deg. W. 17½ feet; thence S. 72 deg. 10 min. W., along the N. line of the said No. 2 P., 2,605.3, to post in mound of stones corner No.

2, being also corner No. 4 of said claim No. 2 P., from which a pine 6 in. diam. bears N. 57 deg. 15 min. W. 21 feet, a pine 12 in. diam. bears S. 88 deg. 40 min. E. 10 feet; thence N. 17 deg. 50 min. W., 1,337 feet to post in mound of stones corner No. 3; thence N. 72 deg. 10 min. E., 2,605.3 feet to post in mound of stones corner No. 4; thence S. 17 deg. 51 min. E., 120.1 feet, to post in mound of stones, corner No. 5 of claim No. 3 P. above mentioned,
127 1,336.6 feet to corner No. 1, the place of beginning, containing 80 acres placer mineral land, adjoining claimants A. B. Wood and others on the south and east, situated in California mining district, Colorado ter.

October 26th, 1874.

Recorded October 30th, A. D. 1874, at 7 p. m.

Quit Claim Deed.

Book C, page 106.] Dated July 10th, 1877.

This deed transfers all the right, title, and interest of A. B. Wood and W. H. Stevens to that portion of placer claims described as follows: Beginning at corner No. 1, which bears from U. S. locating monument established by J. S. Titcomb, U. S. min. surveyor, designated as locating monument at No. 1, and corner No. 1 bears from said monument N. 50 deg. 38 min. E., variation 15 deg., 1070 feet; then thence S. 16 deg. 20 min. E. 666 feet to corner No. 2; thence N. 85 deg. 5 min. E. 1,209 feet to cor. No. 3; thence N. 16 deg. 20 min. W. 914 feet to cor. No. 4; thence S. 73 deg. 40 min.
128 W. 1,000 feet to the place of beginning, to Augustus R. Meyer for the sum of fifty dollars.

Date of acknowledgment, July 20th, 1877. Date of record, July 25th, 1877, at 4 p. m.

Quit Claim Deed.

Book C, page 134.] Dated June 26th, 1877.

This deed transfers all the right, title of R. J. Wood, Jos. W. Wood, and John B. Crawford in and to the claims known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, to A. B. Wood for the sum of fifty dollars.

Date of acknowledgment, June 26th, 1877. Recorded August 21st, A. D. 1877, at 10 a. m.

Warranty Deed.

Book C, page 135.] Dated August 10th, 1877.

This deed transfers all right, title, and interest of A. B. Wood in and to lodes, &c., and also an equal undivided one-third (⅓) part of placer claims known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, excepting certain portions of said placer claims known as the Bradshaw claims, and also excepting that portion of said claims
129 deeded to the St. Louis Smelting and Refining Co., to James F. Leiter for the sum of $20,000, warrants and defend.

Date of acknowledgment, August 21, 1877. Recorded August 21st, A. D. 1877, at 10 a. m.

Warranty Deed.

Book C, page 138.] Dated August 10th, 1877.

This deed transfers all the right, title, and interest of A. B. Wood in and to lodes, &c., and also an equal one-sixth (1-6) part of certain placer claims known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, excepting portions of said placer claims known as the Bradshaw claim, and also excepting that portion of said claim deeded to the St. Louis Smelting and Refining Co., to Joseph W. Wood for the sum of ten thousand dollars, warrants and defends.

Date of acknowledgement, August 21st, 1877. Recorded August 21st, A. D. 1877, at 10 a. m.

Warranty Deed.

Book C, page 149.] Dated August 20th, 1877.

This deed transfers all the right, title, and interest of A. B.
130 Wood in and to lodes, &c., also an equal undivided one-half part ($\frac{1}{2}$) of placer claims known as No. 1 P, No. 3 P, No. 2 P, and No. 4 P, ex. certain portions of said placer claims known as the Bradshaw claims, and also excepting that portion of said placer claims deeded to the St. Louis Smelting and Refining Co., to William H. Stevens for the sum of four thousand four hundred and eighty-six and eighty-four one-hundredths, warrants and defends.

Date of acknowledgement, August 30th, 1877. Recorded August 30th, 1877, at 6 p. m.

Quit Claim Deed.

Book C, page 256.] Dated October 23rd, 1877.

This deed transfers all the right, title, and interest of Jos. W. Wood and Fanny Wood in and to an equal undivided one-sixth (1-6) part of placer claim known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, excepting a certain portion deeded to A. R. Meyer by A. B. Wood and William H. Stevens under date of July 27th, 1877, to James F. Leiter for the sum of fifty dollars.

131 Date of acknowledgement, October 23rd, A. D. 1877. Recorded November 3rd, 1877, at 7 p. m.

Quit Claim Deed.

Book C, page 364.] Dated October 27, 1877.

This deed transfers all the right, title, and interest of James F. Leiter in and to lodes, etc., also an equal undivided one-half (1-2) part of certain placer claims known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, to Levi Z. Leiter, for the sum of one dollar.

Date of acknowledgment, Nov. 2nd, 1877.

Recorded Jan'y 4th, 1878, at 5 p. m.

Certificcte of Relocation.

Book 10, page 272.]

Know all men by these presents that William H. Stevens and Levi Z. Leiter claim as placer land the premises hereinafter described, by virtue of a compliance by them and their grantors with the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May 10th, 1872, and with the local laws, customs, and regulations, said premises being situate in California mining district,
132 county of Lake and state of Colorado, and described as follows, to wit: Beginning No. 1, a granite rock, same as corner No. 1, survey No. 255 and corner No. 1 of claims in California gulch, now held by the Oro Mining, Ditch and Fluming Company, from which U. S. locating monument No. 1 bears S. 89 deg. 45 min. E. (variations in all courses 15 deg. E.) 418 feet, Mt. Sheridan bears S. 67 deg. 47 min. E., Mt. Elbert S. 43 deg. 56 min. W., and running thence north 88 deg. 5 min. E., 1429.5 feet to corner No. 2, a granite rock, corner No. 84, survey No. 255; thence N. 6 deg. 20 min. W., 653 feet to corner No. 3, a granite rock, corner No. 83, survey No. 255; thence N. 73 deg. 40 min. E., 1411 feet to corner No. 4, a granite rock, (S. E. cor.) corner No. 82, survey No. 255; thence N. 29 deg. 40 min. W., 330.5 feet to corner No. 5, a granite rock, corner No. 81, survey No. 255; thence N. 1 deg. 20 min. W., 600 feet to corner No. 6, a granite rock, corner No. 80, survey No. 255; thence N. 13 deg. 10 min. W., 592.2 feet to corner No. 7, a porphyry rock (N. E. cor.); thence S. 88 deg. 5 min. W., 3,070.1 feet to corner No. 8, a granite rock, from which a pine 8 in. diam. bears
133 N. 44 deg. 25 min. W. 225 feet, a pine 12 in. in diam. bears N. 39 deg. 29 min. W. 21.5 feet; thence N. 17 deg. 50 min. W. 120.1 feet to corner No. 9 a granite rock from which a pine 7 in. in diam. bears N. 42 deg. 30 min. W. 5 feet, a pine 10 in. in diam. bears S. 67 deg. 34 min. E. 3.9 feet; thence S. 72 deg. 10 min. W. 2605.3 feet to cor. No. 10, a granite rock (N.W. cor.), from which Mt. Elbert bears S. 39 deg. 39 min. W., Mt. Massive bears S. 65 deg. 7 min. W.; thence S. 17 deg. 50 min. E. 2651.7 feet to corner No. 11, a granite rock (S.W. cor.;) thence N. 85 deg. E. 108 feet to corner No. 12, a granite rock same as corner No. 63 of claim held by said Oro Mg., Ditch and F. Co; thence N. 72 deg. 10 min. E. 2500 feet to corner No. 1, the place of beginning, containing 319.13 acres, said premises being all of placer claims No. 1 P, No. 2 P, No. 3 P, and No. 4 P, except the portion thereof included in survey No. 255, said claims being recorded in the office of the recorder of said Lake county, as follows: No. 1 P in book 9, page 59; No. 2 P in book 9, page 60; No. 3 P in book 9, page 92, and No. 4 P in book 9, page 93, dated January 15th, 1878.

134 (Signed) W. H. STEVENS.
" L. Z. LEITER,
By W. H. STEVENS,
his Att'y in fact.

Recorded January 7th, A. D. 1878, at 7 a. m.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing abstract is true, and sets forth all that appears of record in my office concerning the property therein mentioned, as now remains of record now in my office.

Given under my hand and official seal this 15th day of January, A. D. 1878.

[SEAL.] (Signed) JOS. H. WELLS,
Clerk and Recorder.

Quit Claim Deed.

Book C, page 401.] Dated Jan. 2nd, 1878.

This deed transfers all the right, title, and interest of Alvinus B. Wood in and to placer claims known as No. 1 P, No. 2 P, No. 3 P, and No. 4 P, in California mining district, excepting that part of said claims conveyed to Augustus R. Meter by deeds dated
135 July 10th, 1877, recorded in book C, page 106, Lake co. records, to Wm. H. Stevens and Levi Z. Leiter, for the sum of one dollar.

Date of acknowledgement, Jan. 28th, 1878. Recorded February 6th, 1878, at 4 p. m.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing abstract is true, and sets forth all that appears of record in my office concerning the property therein mentioned, as now remains of record now in my office.

Given under my hand and official seal this 8th day of January, A. D. 1878.

[SEAL.] (Signed) JOS. H. WELLS,
Clerk and Recorder.

(Endorsed:) Placer claim No. 271; application for patent, field notes, power of attorney, and abstract of title. Filed March 26, 1878, in the U. S. land office at Fairplay, Colorado. Jno. J. Henry, register.

Proof of Publication.

STATE OF COLORADO, } ss.
County of Lake, }

136 Cyrus J. Reed, being first duly sworn, deposes and says that he is the publisher of the Lake-county Reveille, a weekly newspaper published at Leadville, in Lake county, in the state of

Colorado; that the notice of the application for a patent for the placer-mining claim survey No. 271, of which a copy is hereto attached, was first published in said newspaper in its issue dated the thirteenth of March, 1878, and was published in each and every issue of said newspaper for (sixty consecutive days or ten consecutive weeks) thereafter, the full period of sixty days, the last publication thereof being in the issue dated the first day of June, A. D. 1878.

(Signed) CYRUS J. REED.

Subscribed and sworn to before me this third day of June, A. D. 1878.

(Signed) D. HOUGHTON, [SEAL.]
[SEAL.] *Notary Public.*

(Endorsed:) Stevens & Leiter placer claim survey No. 271; form H, U. S. mining act May 10th, 1872; proof of publication. Filed in U. S. land office June 5th, 1878. W. H. Burchinell, receiver.

Mining Application No. 178.

137 UNITED STATES LAND OFFICE,
FAIRPLAY, COLORADO, *March 26th*, 1880.

Notice is hereby given that Wm. H. Stevens and Levi Z. Leiter, whose post-office address is Leadville, Lake county, Colorado, have made application for a patent for the Stevens and Leiter placer mine survey No. 271, situate in California mining district, county of Lake and state of Colorado, and known and designated by the field-notes and official plat on file in this office as lot No. 271 in district 3, county and state aforesaid. The exterior boundaries of said lot No. 271 being as follows, to wit, variation 15 deg. E.:

Beginning at corner No. 1, a granite stone, 14x10x5 inches, planted 7 inches deep, marked 1–271, from which U. S. L. M. No. 1, located by J. S. Titcomb, U. S. deputy mineral surveyor, bears 89 deg. 45 min. E., 118 feet; Mt. Sheridan bears S. 67 deg. 47 min. E.; Mt. Elbert, S. 46 deg. 56 min. W. (cor. No. 1, same as corner No. 1–255, and corner No. 1 of placer claims in California
138 gulch owned by Oro Mining, Ditch and Fluming Co. survey 158); thence N. 88 deg. 5 min. E. 1428.5 feet to corner No. 2, a granite rock 16x12x3½ inches, planted 8 inches deep, marked 2–271, (same as corner 84–255;) thence N. 16 deg. 20 min. W. 653 feet to corner No. 3, a granite rock, 14x9x6 inches, planted 8 inches deep, marked 3–271, (same as corner No. 83–255;) thence N. 73 deg. 40 min. E. 538.5 feet to center of Oro Mining, Ditch and Fluming Co.'s ditch, 13 feet wide, 1411 feet to corner No. 4, a granite rock, 16x10x5 inches, planted 7 inches deep, marked 4–271, (same as corner 82–255;) thence N. 29 deg. 40 min. W. 30 feet to road, 330.5 feet to corner No. 5, a granite rock, 14x6x6 inches, planted 9 inches deep, marked 5–271, (same as corner No. 81–255;) thence N. 1 deg.

20 min. W. 600 feet to corner No. 6, a granite rock, 15x10x6 inches, planted 8 inches deep, marked 6–271, (same as corner No. 80–255;) thence N. 13 deg. 10 min. W., 6 feet to south bank of creek 4 feet wide, 30 feet to road, 580 feet to corner No. 79–255, 592.2 feet to corner No. 7, a porphyry rock, 14x8x6 inches, planted 7 inches deep, marked 7–271; thence S. 88 deg. 5 min. W. 2390.1 feet to center
139 of Oro Co.'s ditch, 13 feet wide, 3,070.1 feet to corner No. 8, a granite rock 12 x 8 x 6 inches, planted 6 inches deep, marked 8–271, from which a pine 8 inches in diameter bears N. 4 deg. 25 min. W. 22.5 feet, marked 8–271; a pine 12 inches in diameter bears N. 39 deg. 29 min. W. 21.5 feet, marked 8–271; thence N. 17 deg. 50 min. W. 120.1 feet to corner No. 9, a granite rock 12 x 8 x 6 inches, planted 6 inches deep, marked 9–271, from which a pine 7 inches in diameter bears N. 42 deg. 30 min. W. 5 feet, marked 9–271; a pine 10 inches in diameter bears S. 67 deg. 84 min. E. 3.9 feet, marked 9–271; thence S. 72 deg. 10 min. W. 2,605.3 feet to corner No. 10, a granite rock 12 x 8 x 8 inches, planted 6 inches deep, marked 10–271, from which Mt. Elbert bears S. 39 deg. 39 min. W.; Mt. Massive S. 65 deg. 7 min. W.; thence S. 17 deg. 50 min. E. 2,651.7 feet to corner No. 11, a granite rock 13 x 6 x 5 inches, planted 6 inches deep, marked 11–271; thence N. 85 deg. E. 108 feet to corner No. 12, a granite rock 12 x 6 x 5 inches, planted 6 inches deep, marked 12–271 (same as corner 63 of claims in California gulch, owned by Oro Mining, Ditch and
140 Fluming Co.); thence N. 72 deg. 10 min. E. 1,143 feet to center of Stray Horse creek, 4 feet wide, 2,500 feet to corner No. 1, the place of beginning, containing 298.319 acres more or less.

This claim is bounded on the south and east by Tom Starr's place claim. The location of this mine is recorded in the recorder's office of Lake county, Colorado, in book 10, page 272. Any and all persons claiming adversely any portion of said Stevens and Leiter placer mine, or said mining ground as hereinbefore described, are requested to file the adverse claim with the register of the United States land office at Fairplay, in the state of Colorado, during the sixty-days period of publication hereof, or they will be barred by virtue of the provisions of the statute.

JNO. J. HENRY,
Register.
W. K. BURCHINELL,
Receiver.

Proof of Posting Notice and Diagram of the Claim.

STATE OF COLORADO, }
County of Lake, } *ss.*

William Borden and Josiah A. Eade, each for himself and
141 not one for the other, being first duly sworn according to law, deposes and says: That he is a citizen of the United States,

over the age of 21 years, and was present on the 25th day of March, A. D. 1878, when a plat representing the Stevens and Leiter placer claim, survey No. 271, and certified to as correct by the U. S. surveyor general of Colorado, together with the notice of the intention of William H. Stevens and Levi Z. Leiter to apply for a patent for the mining claim and premises so platted, as posted on a conspicuous place upon said mining claim, to wit, upon the outside of the front door of the building of said Stevens and Leiter now used as an office, being the building mentioned in the field-notes of survey of said claim, where the same could be easily seen and examined; the notice so conspicuously posted upon said claim being in words and figures as follows, to wit: "Legal notice of the intended application of William H. Stevens and Levi Z. Leiter for a United States patent.

"Notice is hereby given that in pursuance of the act of Con-
142 gress, approved May 10, 1872, to promote the development of the mining resources of the United States, William H. Stevens and Levi Z. Leiter, claiming the Stevens and Leiter placer claim, survey No. 271, lying and being situate within the California mining district, county of Lake and state of Colorado, will make application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted, and by the field-notes of survey thereof, to be filed in the office of the register of the district of lands subject to sale at Fairplay, Colorado, which field-notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at fifteen east, as follows, to wit:

"Beginning at corner No. 1, a granite st. 14x10x5 in. planted 7 in. deep, marked 1–271, from which U. S. L. M. No. 1, located by J. S. Titcomb, U. S. deputy mineral surveyor, bears S. 89 deg. 45 min. E. 418 ft., Mt. Sheridan bears S. 67 deg. 47 min.
E., Mt. Elbert bears S. 43 deg. 56 min. W. (cor. No. 1 same
143 as cor. No. 1–255) and cor. No. 1 of placer claims in California gulch, owned by Oro M'g, Ditch and Fl'g Co., sur. 158; thence N. 88 deg. 5 min. E., 1,428.5 feet to cor. No. 2, a granite rock, 16x12x3½ in., planted 8 in. deep, marked 2–271, same as cor. 84–255; thence N. 16 deg. 20 min. W., 653 feet to cor. No. 3, a granite rock, 14x9x6 in., planted 8 in. deep, marked 3–271 (same as cor. No. 83–255); thence N. 73 deg. 40 min. E., 538.5 feet to center of Oro M'g and Fl'g Co.'s ditch, 13 feet wide, 1,411 feet to cor. No. 4, a granite rock, 16x10x5, planted 7 in. deep, marked 4–271 (same as cor. No. 82–255); thence N. 23 deg. 40 min. W., 30 feet to road, 380.5 feet to corner No. 5, a granite rock, 14x8x6 in., planted 9 in. deep, marked 5–271 (same as cor. 81–255); thence N. 1 deg. 30 min. W., 600 feet to cor. No. 6, a granite rock, 15x10x6 in. planted 8 in. deep, marked 6–271 (same as cor. No. 80–255); thence N. 13 deg. 10 min. W., 6 feet to S. bank of creek, 4 feet wide, 30 ft. to road, 580 ft. to cor. No. 79–255, 5,921.2 feet to cor. No. 7, a porphyry rock, 14x8x6 in., planted 7. in. deep, marked

7–271; thence S. 88 deg. 5 min. W., 2,390.1 feet to center
144 of Oro Co.'s ditch, 13 feet wide, 3,070.1 feet to cor. No. 8, a granite rock, 12x8x6 in., planted 6 in. deep, marked 8–271, from which a pine, 8 in. dia., bears N. 4 deg. 25 min. W., 22.5 feet, marked 8–271, a pine, 12 in. dia., bears N. 39 deg. 29 min. W., 21.5 feet, marked 8–271; thence N. 17 deg 50 min. W., 120.1 feet to cor. No. 9, a granite rock, 12x8x6 in., planted 6 in. deep, marked 9–271, from which a pine, 7 in. dia., bears N. 42 deg. 30 min. W., 5 feet, marked 9–271, a pine 10 in. dia., bears S. 67 deg. 34 min. E., 3.9 feet, marked 9–271; thence S. 72 deg. 10 min. W., 2,605.3 feet, to cor. No. 10, a granite rock, 12x8x8, planted 6 in. deep, marked 10–271, from which Mt. Elbert bears S. 39 deg. 39 min. W., Mt. Massive S. 65 deg. 7 min. W.; thence S. 17 deg. 50 min. E., 2,651.7 feet to cor. No. 11, a granite rock, 12x6x5 in., planted 6 in. deep, marked 11–271; thence N. 85 deg. E., 108 feet to cor. No. 12, a granite rock, 12x6x5 in., planted 6 in. deep, marked 12–271 (same as cor. No. 63, of claims in California gulch, owned by Oro Mining, Ditch and Fluming Co.); thence N. 72 deg. 10 min. E., 1,143 feet to center of Stray Horse creek, 4 feet wide, 2,500 feet to cor. No. 1,
145 the place of beginning, containing 298.319 acres more or less. The said mining claim being of record in the recorder's office of said Lake county and state of Colorado, at Granite, in said Lake county, in book 10, page 272; said claim being for 298.319 acres of placer land, and designated as lot 271 in the official plat posted herewith. Any and all persons claiming adversely the said premises or any part thereof are hereby notified that unless their adverse claims are duly filed with the register of the U. S. land office at Fairplay, Colorado, within the period of sixty days of publication of this application, they will be forever barred in virtue of the provisions of said statute. Dated on the ground this 25th day of March, A. D. 1878.

(Sig.) W. H. STEVENS.
(Sig.) LEVI Z. LEITER,
By W. H. STEVENS.

Witnesses:

(Sig.) WM. BORDEN. WM. BORDEN.
(Sig.) J. A. EADE. J. A. EADE.

Subscribed and sworn to before me this 25th day of March, A. D. 1878, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and
146 notice were read by each of them before their signatures were affixed thereto and the oath made by them.

[SEAL.] W. A. NORTHRUP,
Notary Public in and for Lake county, state of Colorado.

(Indorsed:) "In re appl." for patent, Stevens and Leiter; survey No. 271; proof of posting notice; filed March 26th, 1878, in the U. S. land office at Fairplay, Colorado; Jno. J. Henry, register.

STATE OF COLORADO, } ss.
County of Lake, }

William Borden and Josiah A. Eade, being first duly sworn, each for himself deposes and says that he is well acquainted with the Stevens and Leiter placer mining claim survey No. 271, situate in California mining district, county of Lake and state of Colorado, owned by William H. Stevens and Levi Z. Leiter, applicant for United States patent; that for a long time he has resided near and after been upon the said mining premises, and that no known veins of quartz or other rock in place bearing gold, silver, cinnabar,
147 lead, tin or copper exist thereon or any part thereof, as far as known, and he verily believes that none exists thereon; and that he has no interest whatever in said claim.

WM. BORDEN.
J. A. EADE.

Subscribed and sworn to before me this 25th day of March, A. D. 1878.

[SEAL.] W. A. NORTHRUP,
Notary Public in and for Lake county, Colorado.

(Endorsed:) Placer claim lot 271; affidavit No. lodes; filed March 27th, 1878, in the U. S. land office at Fairplay, Colorado; Jno. J. Henry, register.

Proof that plat and notice remained posted on claim during time of publication.

STATE OF COLORADO, } ss.
County of Lake, }

William H. Stevens, being first duly sworn according to law, deposes and says that he is claimant (and co-owner with Levi Z. Leiter) in the placer mining claim, survey No. 271, in California mining district, Lake county, Colorado, the official plat of which premises, together with the notice of intention to apply for a
148 patent therefor, was posted thereon on the 25th day of March, A. D. 1878, as fully set forth and described in the affidavit of William Borden and Josiah A. Eade, dated the 25th day of March, A. D. 1878, which affidavit was duly filed in the office of the register at Fairplay, Colorado, in this case; and that the plat and notice so described remained continuously and conspicuously posted upon said mining claim from the 25th day of March, A. D. 1878, until and including the 2nd day of June, A. D. 1878, including the sixty days' period during which notice of said application for patent was published in the newspaper.

W. H. STEVENS.

Subscribed and sworn to before me this 3rd day of June, A. D. 1878, and I hereby certify that the foregoing affidavit was read to

the said William H. Stevens previous to his name being subscribed thereto; that that deponent is a respectable person, to whose affidavit full faith and credit should be given.

W. A. NORTHRUP, [SEAL.]
[SEAL.] *Notary Public.*

(Endorsed:) Stevens and Leiter placer mine; U. S. sur.
149 No. 271; form E, U. S. mining act May 10, 1872; proof that plat and notice remained posted on claim during notice of publication; filed in the U. S. land office, Fairplay, Colorado, June 5th, 1878; Wm. K. Burchinell, receiver.

Register's Certificate of posting Notice for sixty days.

U. S. LAND OFFICE AT FAIRPLAY, COLORADO.
June 4th, 1878.

I hereby certify that the official plat of the Stevens and Leiter claim survey No. 271 was filed in this office on the 26th day of March, A. D. 1878, and that the attached notice of the application of William H. Stevens and Levi Z. Leiter for a patent for the mining claim or premises embraced by said plat and described in the field-notes of survey thereof filed in said application was posted conspicuously in this office on the 26th day of March, A. D. 1878, and remained so posted until the 4th day of June, A. D. 1878, being the full period of sixty consecutive days as required by law, and that said plat remained in said office during that time
150 subject to examination.

JNO. J. HENRY, *Register.*

(The notice posted in the office should be attached to this certificate.)

(Indorsed:) Stevens and Leiter placer claim, U. S. sur. No. 271; form F, U. S. mining act, May 10, 1872; register's certificate of posting notice for sixty days; filed in U. S. land office, Fairplay, Col., June 5th, 1878. W. K. Burchinell, receiver.

In the matter of the application of William H. Stevens & Levi Z. Leiter for U. S. patent to survey No. 271.

STATE OF ILLINOIS, } *ss.*
County of Cook. }

Levi Z. Leiter, being first duly sworn according to law, deposes and says that he is one of the applicants for patents for the placer mining claim known as survey No. 271, situate in California mining district, county of Lake and state of Colorado; that he is a native citizen of the United States, born in the county of Washington, state of Maryland, in the year 1834, and is now a resident of the county of Cook in the state of Illinois.

LEVI Z. LEITER.

151 Subscribed and sworn to before me this 14th day of January, A. D. 1878.

EDWARD NEVERS,
[SEAL.] *Notary Public.*

(Indorsed:) In re appl'n for U. S. patent by Stevens and Leiter, survey No. 271; affidavit of citizenship by Levi Z. Leiter; filed March 26th, 1878, in U. S. land office at Fairplay, Colorado.

JNO. J. HENRY,
Register.

WASHINGTON, D. C., *July 13th*, 1878.

Hon. J. A. WILLIAMSON, Comm'r G. L. O.

SIR: I desire to enter my appearance for Messrs. Stevens and Leiter in case of the application for patent for the placer mine embraced by survey No. 271, Fairplay district, Colorado, and to advised of any action taken in the case.

Very respectfully, your ob't ser't,

ELLERY C. FORD.

(Indorsed:) Ellery C. Ford, city, July 13, 1878; appearance for Stevens & Leiter in matter of their application for patent, &c., Col.; ans'd July 17, 1878; July 16, 1878.

UNITED STATES LAND OFFICE,
FAIRPLAY, COLORADO, *July 16th*, 1878.

Hon. Commissioner General Land Office, Washington, D. C.

152 SIR: At the request of Mr. Jas. Y. Marshall, attorney for the adverse claimants, I have the honor to herewith enclose adverses Nos. 3 and 4 against the application of Stevens and Leiter placer claim survey, No. 271, mineral entry No. 154. Suit was not commenced in these cases in time, so I regarded them as having expired, but Mr. Marshall claims that under the town site law it is not required that suit commence within the thirty days, and wished them forwarded to be taken into consideration with his appeal from our decision in allowing said entry.

Very respectfully,

WM. K. BURCHINELL,
Receiver.

(Indorsed:) Receiver U. S. land office, Fairplay, Colorado, forwards adverses Nos. 3 and 4 against survey No. 271, mineral entry No. 154; Wm. K. Burchinell, receiver; H. July 22, 1878.

UNITED STATES OF AMERICA, }
State of Colorado. }

In the United States Land Office at Fairplay, Colorado.

153 In the matter of the application of Wm. H. Stevens and Levi Z. Leiter for patent to placer ground known as survey No. 271.

And now, to wit, July 2nd, Peter Starr, the adverse claimant, by his attorneys, appeals from the action of the register and receiver in allowing the said applicants for patent to enter and pay for said tract of land, and alleges the following grounds for appeal:

I. The adverse claim of the said Peter Starr was filed within the sixty days of publication, and is a sufficient protest and adverse claim, was accepted by the register and receiver as such, and their fees paid and accepted, and the filing of said protest operated to stay all proceedings until the rights of the parties could be determined in a court of competent jurisdiction.

II. It was necessary for the applicants for patent to show by proper certificate that at the end of the thirty days allowed for the institution of suit no suit was pending, and the certificate filed by them does not show that, its date being prior to the expiration of the thirty days.

154 III. The notice of lis pendens, filed by the adverse claimant, shows that suit was brought within the thirty days allowed, and now pending; and whether such certificate was or was not filed it is incumbent upon the applicant to show that the adverse claim had been waived by failure to bring such suit within the proper time, and there is no provision of law making it necessary for the adverse claimant to file a certificate of lis pendens within thirty days, or to file such a certificate at all.

IV. The filing of said adverse claim and the institution of suit thereon within thirty days ousted the jurisdiction of the land office and stayed the proceedings, and the register and receiver, in allowing said entry, acted without warrant, authority, or precedent, and in direct violation of law, and their acts have no binding force or effect.

The said adverse claimant, therefore, asks that the said entry be cancelled, annulled, and set aside.

GRIFFITH & CAVENDER and J. Y. MARSHALL,

155 *Atty's for Peter Starr, Adverse Claimant.*

(Endorsed:) Filed in the U. S. land office at Fairplay, Colo., July 3rd, 1878; Jno. J. Henry, register; in re. of the application of Stevens & Leiter for patent for lot No. 271; points on appeal.

UNITED STATES LAND OFFICE,
FAIRPLAY, COLORADO, *July 3rd*, 1878.

HON. COMMISSIONER GENERAL LAND OFFICE.

SIR: I have the honor herewith to transmit papers in the cause of Stevens & Leiter's mineral application No. 178, mineral entry No. 154, survey No. 271, known as the "Stevens & Leiter placer claim," lying and being in California mining district, Lake county, Colorado. And also an appeal by James T. Marshall, attorney for adverse claimants and the adverse papers. The appeal is from the action of the R. & R. for allowing entry and payment after adverse

had been filed. The entry and payment was allowed notwithstanding adverse, because we were in receipt of certificate from clerk of court that no suits existed or had been brought up to June 25, the entry being allowed July 2nd, no certificate of suit having
156 been commenced, being filed in this office; but after allowing the entry Marshall did file on the 2nd of July a certificate of suit pending, which certificate is also herewith transmitted.

We acted in allowing this entry according to our best knowledge, and hope such action will be approved.

Very respectfully, your ob't servant,

JNO. J. HENRY, *Register.*

(Endorsed:) Register land office at Fairplay, Colorado, July 3rd, 1878; transmits papers in case of mineral application No. 178, and adverse and appeal papers, same case; N., July 10, 1878.

WASHINGTON, D. C., *Nov.* 8, 1878.

Hon. J. A. WILLIAMSON, Comm'r G. L. O.

DEAR SIR: I enclose herewith duplicate receipt 154, Fairplay, Col., being for the placer claim of Wm. H. Stevens et al. Be pleased to send patent to me when issued.

Very respectfully, your ob't ser't,

ELLERY C. FORD.

Duplicate Receiver's Receipt.

157 Duplicate to be given to the purchaser. Mineral entry, U. S. land office at Fairplay, Colo., No. 154, lot No. 271. July 2nd, 1878.

Received from Wm. H. Stevens and Levi Z. Leiter the sum of seven hundred and forty-seven 50-100 dollars, the same being in full for the surface area embraced by survey No. 271, in the of section , township No. , of range No. meridian, said mineral claim or lot of land being situate in California mining district, county of Lake and state of Colorado, and known as the Stevens and Leiter placer.

Mining claim embracing 298.32 acres, as shown by said survey. $747.50.

WM. H. BURCHINELL,
Receiver.

Affidavit of five hundred dollars improvements.

STATE OF COLORADO, }
County of Lake, } *ss.*

William Borden and Josiah A. Eade, of lawful age, being first duly sworn according to law, depose and say that they are acquainted

with the placer mining claim, survey No. 271, district 3, in
158 California mining district, county and state aforesaid, for which Wm. H. Stevens and Levi Z. Leiter have made application for patent under the provisions of the act of Congress approved May 10, 1872, and that the labor done and improvements made thereon by the applicant and his grantors exceed five hundred dollars in value, and consist of buildings and shafts and open cuts.

WM. BORDEN.
J. A. EADE.

Subscribed and sworn to before me this 25th day of March, A. D. 1878.

W. A. NORTHRUP,
Notary Public.

(Indorsed:) Placer claim, lot 271; form L, U. S. mining act, May 10, 1872; affidavit of five hundred dollars improvements; filed March 26, 1878, in the U. S. land office, Fairplay, Colorado, March 26, 1878.

JNO. J. HENRY,
Register.

In the matter of the application of William H. Stevens and Levi Z. Leiter for U. S. patent to survey No. 271.

STATE OF COLORADO, }
County of Lake, } *ss.*

William H. Stevens, being first duly sworn according to law, deposes and says that he is one of the applicants for patent for
159 placer mining claim known as survey No. 271, situate in California mining district, county of Lake and state of Colorado; that he is a native citizen of the United States, born in the county of Seneca, state of New York, and is now a citizen of the county of Wayne and state of Michigan.

WILLIAM H. STEVENS.

Subscribed and sworn to before me this 23rd day of March, A. D. 1878.

[SEAL.] WALTER A. NORTHRUP,
Notary Public, Lake county, Colorado.

(Indorsed:) In re appl'n for patent for survey No. 271, by Stevens & Leiter; affidavit of citizenship by Wm. H. Stevens; filed March 26, 1878, in the U. S. land office at Fairplay, Colo.

JNO. J. HENRY, *Register.*

SURVEYOR-GENERAL'S OFFICE,
DENVER, COL., *April 29th*, 1878.

I, William L. Campbell, surveyor-general of Colorado, do hereby certify that the value of labor and improvements upon the mining

claim known as the claim of Stevens and Leiter upon their placer claim in California mining district, Lake county, Colorado, being survey No. 271, district No. 3, placed upon said claim by the
160 claimant or his grantors, is not less than five hundred dollars, and that said improvements consist of shafts originally from 10 to 40 feet deep. This certificate is based upon the affidavits of W. H. Stevens and Henry D. Bates, which affidavits are now on file in this office.

WM. L. CAMPBELL,
Surveyor-General of Colorado.

(Indorsed:) In re appl'n for patent Stevens and Leiter placer; lot 271; certificate of improvements by surveyor general; filed in the U. S. land office at Fairplay, Colorado, June 25th, 1878; Jno. J. Henry, register.

Certificate that no Suit is Pending.

STATE OF COLORADO, }
County of Lake, } *ss.*

I, Joseph H. Well, clerk of the district court in and for Lake county, Colorado, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of the Stevens and Leiter placer mining claim applied for by William H. Stevens and Leiter, and that there has been no litigation before said court affecting the title to said
161 claim, or any part thereof, for four years last past, other than what has been finally decided in favor of Stevens and Leiter. In witness whereof I have hereunto set my hand and affixed the seal of said court at my office in Granite, this 27th of Sept., A. D. 1878.

[SEAL.] JOS. H. WELL,
Clerk of the district court of the fourth judicial district, state of Colorado.

(Endorsed:) Case of the Stevens and Leiter placer claim; form M, U. S. mining act, May 10, 1872; U. S. land office; filed in the U. S. land office, at Fairplay, Colorado, October 1, 1878; Jno. J. Henry.

Certificate that no Suit is Pending.

UNITED STATES LAND OFFICE,
FAIRPLAY, COLORADO, *October 1st*, 1878.

Hon. Commissioner General Land Office.

SIR: Referring to my letter of the 24th ultimo, transmitting withdrawal of adverse claims, case of Stevens and Leiter mineral entry

No. 154, survey No. 271, I have now the honor herewith to transmit certificate that no suit exists in the case.

Most respectfully, your ob'd't servant,

JNO. J. HENRY,
Register.

162 (Indorsed:) From register at Fairplay, Colorado, October 1, 1878; transmitting proof that no suit exists; case of Stevens & Leiter; mineral entry No. 154, Oct. 7, 1878.

Statement and Charge of Fees.

STATE OF COLORADO, } *ss.*
County of Lake, }

William H. Stevens, being first duly sworn according to law, deposes and says that he and Levi Z. Leiter, the applicant for patent for the placer claim, U. S. survey No. 271, in California mining district, county of Lake and state of Colorado, under the provisions of the act of Congress approved May 10, 1872, and that in the prosecution of said application they have paid out the following amounts, viz: To the credit of the surveyor-general's office, $25.00; for surveying, $96.00; for filing in the local land office, $10.00; for publication of notice, $62.00, and for the land embraced in his claim, $——.

W. H. STEVENS.

Subscribed and sworn to before me this third day of June, A. D. 1878.

W. A. NORTHRUP, [SEAL.]
[SEAL.] *Notary Public.*

163 (Indorsed:) Form J; U. S. mining act, May 10, 1872; statement and charge of fees; Stevens and Leiter placer claim, U. S. survey No. 271; filed in U. S. land office, Fairplay, Colorado, June 5th, 1878; Wm. K. Burchinell, receiver.

Agreement of Publisher.

The undersigned, publisher and proprietor of the Lake County Reveille, weekly newspaper published at Leadville, Lake co. and state of Colorado, do hereby agree to publish a notice, required by act of Congress approved May 10, 1872, of the intention of Wm. H. Stevens and Levi Z. Leiter to apply for a patent for their claim on the Stevens and Leiter placer claim, survey No. 271, situated in California mining district, county of Lake, state of Colorado, and to hold the said Stevens and Leiter alone responsible for the amount due for publishing the same. And it is hereby expressly stipulated and agreed that no claim

shall be made against the government of the United States, or its officers or agents, for such publication.

Witness my hand and seal this 25th day of March, A. D. 1878.

R. S. ALLEN,
per E. S. WARNER.

Witness: ———

164 (Endorsed:) Placer claim, lot 271; form G, U. S. mining act May 10, 1872; agreement of publisher; filed March 26th, 1878, in the U. S. land office at Fairplay, Colorado; Jno. J. Henry, register.

Register's Final Certificate of Entry.

U. S. LAND OFFICE AT FAIRPLAY, COLO.,
July 2nd, 1878.

Mineral Entry No. 154, Lot No. 271.

It is hereby certified that in pursuance of the mining act of Congress approved July 26th, 1866, and the acts amendatory thereof approved July 9, 1870, and May 10, 1872, Wm. H. Stevens and Levi Z. Leiter, whose post-office address is Leadville, Lake county, Colorado, on this day purchased that mineral claim or lot of land designated as survey No. 271, situate, lying, and being in the California mining district, in the county of Lake and state of Colorado, known as the Stevens and Leiter placer mining claim, embracing with 298.32 acres of surface ground as shown by said survey, for which said Wm. H. Stevens and Levi Z. Leiter have this day made payment to the receiver in full, amounting to the sum of seven hundred and forty-seven 50-100 dollars.

165 Now, therefore, be it known, that upon the presentation of this certificate to the commissioner of the general land office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to said William H. Stevens and Levi Z. Leiter, if all be found regular.

JOHN J. HENRY, *Register.*

(Indorsed:) Register's final certificate of entry; case of the Stevens and Leiter placer mining claim of Wm. H. Stevens and Levi Z. Leiter upon the placer claim, being lot No. 271, in California mining district, Lake county, Colorado, claimed by William H. Stevens and Levi Z. Leiter.

Receiver's Receipt.

(Duplicate to be given the purchaser.)

U. S. LAND OFFICE, FAIRPLAY, COLO., *July 2nd*, 1878.

Mineral entry No. 154, lot No. 271.

Received from Wm. H. Stevens and Levi Z. Leiter the sum of

seven hundred and forty-seven and 50-100 dollars, the same being in full for the surface area embraced by survey No. 271, said mineral claim or lot of land being situate in California mining dis-
166 trict, county of Lake and state of Colorado, and known as the Stevens and Leiter placer mining, embracing 298.32 acres, as shown by said survey.

WM. K. BURCHINELL, *Receiver.*

(Indorsed:) Receiver's receipt; case of the Stevens and Leiter mining claim, lot No. 271, mining district California, county of Lake, Colorado, claimed by Wm. H. Stevens and Levi Z. Leiter.

STATE OF COLORADO, } *ss.*
County of Lake. }

I, Jos. H. Wells, clerk of the district court in and for Lake county, in the state aforesaid, do hereby certify that a suit has been commenced in the said district court by Peter Starr, plaintiff, against Wm. H. Stevens and Levi Z. Leiter for the recovery of the possession of certain placer mining ground, to wit, situated in California gulch mining district, Lake county, Colorado, and described as follows: Beginning at cor. No. 1, which bears from corner 1, survey No. 255, south 72 deg. 10 min. W. 1,000 feet; thence N. 50 deg. 30 min. E. 500 ft. to cor. No. 2; thence N. 40 deg. E. 500 feet to cor. No. 3; thence N. 57 deg. 23 min. E. 500 feet to cor. No.
167 4; thence N. 57 deg. 15 min. E. 500 feet to cor. No. 5; thence N. 52 deg. E. 500 ft. to cor. No. 6; thence N. 50 deg. E. 500 ft. to cor. No. 7; thence N. 60 deg. E. 500 ft. to cor. No. 8; thence N. 62 deg. E. 608 ft. to cor. No. 9; thence N. 13 deg. 10 min. W. 507 5-10 ft. to cor. No. 10; thence south 62 deg. W. 838 ft. to cor. No. 11; thence south 60 deg. W. 500 feet to cor. No. 12; thence south 50 deg. W. 500 ft. to cor. No 13; thence 52 deg. W. 500 ft. to cor. No. 14; thence south 57 deg. 15 min. W. 500 ft. to cor. No. 15; thence south 57 deg. 23 min. 500 ft. to cor. No. 16; thence south 45 deg. W. 500 ft. to cor. No. 17; thence south 50 deg. 30 min. W. 500 ft. to cor. No. 18; thence south 39 deg. 13 min. E. 500 feet to the place of beginning.

Also another placer mining claim in said district, county and state, described as follows: Beginning at cor. No. 1, survey No. 255; thence N. 16 deg. 45 min. W., variation 15 deg. E., 436 ft.; thence north 57 deg. 23 min. E., 407 5.10 ft.; thence north 57 deg. 15 min. E., 500 ft.; thence north 52 deg. E., 500 ft.; thence north 62 deg. E., 608 ft.; thence south 13 deg. 10 min. E., 120 ft.; thence south 1 deg. 20 min. E., 600 ft.; thence south 29 deg. 40 min. E., 331 ft.; thence south 73 deg. 40 min. W., 1,409 ft.; thence south 16 deg. 20 min. E., 653 ft.; thence 88 deg. 5 min. W., 1,426 ft. to the place of beginning. And that the above-mentioned suit is now pend-
168 ing and undetermined in and by said court.

Witness my hand and official seal this 25th day of June, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Clerk District Court Lake county, Colorado.

(Endorsed:) Notice that suit is pending; filed in the U. S. land office at Fairplay, Colorado, July 2d, 1878; Jno. J. Henry, register.

CHICAGO, *July* 19, 1878.

Hon. WM. ALDRICH:

MY DEAR SIR: I desire to trespass upon your valuable time and ask that you lay before the proper official in Washington and ask their careful consideration of a matter concerning the title to some property I purchased in Colorado. The case is Stevens and Leiter, application for a patent to their placer claim, U. S. survey No. 271, Lake county, Colorado, mineral entry No. 154, U. S. land office, Fairplay, Colorado. I desire that a searching investigation be made into any adverse claim that may be presented, believing and fair hearing of the case will be convincing as to the equity of our claim.

I am inclined to think that to a great degree the adverse
169 claimants are instigated by personal motives towards my partner, Mr. Wm. H. Stevens.

I remain, my dear sir, yours truly,

(Over.) LEVI Z. LEITER.

Hon. J. A. WILLIAMSON,
Washington, D. C.

DEAR SIR: Mr. Leiter, the writer of the within letter, is a very able and honorable gentleman and one of the best merchants I know. I feel confident he wants only what is just and fair, and I trust you will carefully look into the matter of which he writes and give the subject such attention as may be necessary for a correct understanding of the matter, when I feel sure you will render a just decision. I have the honor to be, with great respect,

Your ob't serv't,

WM. ALDRICH.

WASHINGTON CITY, *September* 17*th*, 1878.

Hon. JAMES A. WILLIAMSON,
Comm'r Gen'l Land Office.

SIR: As attorneys for adverse claimants and protestants in the matter of the application for a placer mining patent, upon
170 which entry No. 154, Fairplay, Colorado, series, was allowed, we respectfully ask the immediate cancellation of said entry, on the ground that it is illegal and contrary to law, having been allowed before the expiration of thirty days from the filing of a legal and sufficient adverse claim in the local land office. Argument is

not necessary to show that such an entry is void, or that the parties protestant, whose rights are affected by it, have a right to have it vacated and cancelled and the lands restored to the condition they were in before its allowance. Public policy, as well as private interests and rights, forbid that lands should be tied up by such an unwarranted and illegal proceeding as the allowance of the entry.

Respectfully,

DRUMMOND AND BRADFORD.

WASHINGTON, D. C., *October* 12, 1878.

Hon. J. A. WILLIAMSON,
Commissioner of General Land Office.

SIR: Of the undersigned, Britton & Gray are attorneys for the Thomas Starr placer claim, and, waiving argument, desire
171 that same claim be taken up and decided. Col. Ford is attorney for the Oro Mining, Ditch and Fluming Company and for the Stevens and Leiter placer claim, and also attorney against Britton and Gray in the Thomas Starr claim. Said Ford desires that the Starr claim should be taken up and decided, and waiving argument as above, but upon condition that the other two cases shall be taken up and decided at the same time. The three cases are adjacent and present the same question. The interests of a community require early action and bring the cases fully within the excepting rule of your office as to special cases.

Very respectfully,

BRITTON & GRAY, ELLERY C. FORD.

(Endorsed:) Britton & Gray and Ellery C. Ford, city, October 12, 1878, ask action on cases of the Thomas Starr, Oro Mining Co., and Stevens and Leiter placer claims; October 15, 1878.

WASHINGTON, D. C., *October 24th*, 1878.

Hon. J. A. WILLIAMSON,
Comm'r G. L. O.

DEAR SIR: I enclose herewith the affidavit of Wm. H. Stevens, one of the applicants for patent for the Stevens and Leiter
172 placer claim, Fairplay district, Colorado, showing and occupation and possession of the premises described in said application by the applicants and their grantors from the organization of California mining district to the present time; also showing the amount which has been expended in the development of the Stevens and Leiter and Oro company's placer claim. The sworn statement of Mr. Stevens is corroborated by those of Geo. L. Henderson, Thos. S. Wells, Andrew J. Hill, and C. W. Dewey.

Very respectfully, your ob't serv't,

ELLERY C. FORD.

STATE OF COLORADO, } ss.
Lake county, }

WM. H. STEVENS, of lawful age, first being duly sworn, deposes and says that he is a citizen of the United States, over the age of 21 years, and a resident of Detroit, in the state of Michigan; that since the year 1873 he has been well acquainted with California mining district, in the county of Lake, in the state of Colorado, and particularly with the Starr placer claim, so called, being mining appli-
173 cation No. 177, and also the Stevens and Leiter placer claim, so called, being application No. 271, and this affi*davit* further says, upon oath as aforesaid, that in the year 1873 he and one Alvinus B. Wood, who is a citizen of the United States and a resident of Ann Arbor, in the state of Michigan, explored and prospected in and upon said placer claim, as well as upon other and extensive tracts of country in said California mining district, for the purpose of ascertaining whether said placer claims and also other placer claims in the vicinity contained a sufficient amount of gold to justify the expenditure of the large sum of money that would be required to purchase from the claimants of the placer-mining claims said claims and to construct a ditch from near the head of the Arkansas river, a distance of about 11 miles, for the purpose of conveying water to the said claims, and also the expense of constructing a bed rock flume to and into said claims for the purpose of working the same to the best advantage. And this affiant further says, on oath as
174 aforesaid, that he and the said Wood continued their explorations and prospecting when they had the opportunity for so doing until some time in the year 1874, when, having become satisfied from the extensive and thorough investigation made by them as aforesaid, they purchased from the claimants and possessors of said claims a large number of mining claims and a large quantity of placer mining ground, intending thereby to obtain a sufficient interest in the placer mines of said California mining district to justify the large expenditure of money attendant thereon, and that in making the said purchases of mining claims they expended large sums of money in the aggregate amounting to fifty thousand dollars, and that a part of the mining claims and placer ground so purchased is included in the Starr placer claim, so called, and another part of said mining claims so purchased is included in the Stevens and Leiter placer claim, so called; and this affiant further says, on oath as
175 aforesaid, that at the time of the making of said purchases of said mining claims and the expenditure of said sum of money that the part of said California mining district in which said claims are situated was almost entirely deserted, so that not more than fifteen miners resided or worked in the immediate vicinity of said claims, and that not more than fifteen houses remained upon or within one mile of said claim, and that said purchases were made in good faith by this affiant and said Wood, believing that said claims contained sufficient gold to justify the large expenditure of money

necessary for the purchase and working of the same, and that said claims and mining ground were then and have ever since that time been properly classified as placer mineral lands and were then and are now and of right ought to be subject to be purchased from the United States under the laws thereof relating to the sale of placer mineral lands. And this affiant further says that in consequence of the imperfection of the records of many of said mining
176 claims it was deemed advisable to relocate many of said mining claims, which was done accordingly for the sole use and benefit of this affiant and said Wood and their assignees, and that thereafter a portion of said mining claims was transferred to the said Thomas Starr and now constitutes a part of the so-called Starr placer claim, embraced in application No. 177 as aforesaid, and that the said A. B. Wood sold and transferred for a valuable consideration a portion of his interest in said claims to one Levi Z. Leiter, a citizen of the United States and a resident or Chicago, in the state of Illinois, and thereby this affiant and the said Leiter became possessed of and were and still are the owners of the said Stevens and Leiter placer mine and mining claims, being embraced in mining application No. 271; and this affiant further says that he and the said A. B. Wood and their associates organized a mining company in the year 1875 under the name of the Oro Ditch, Mining and Fluming Co., for the purpose of securing water to use
177 in working the mines and mining claims aforesaid, and for working the same and securing the gold therefrom. And this affiant further says that in the year 1875 the said mining company, at a great expense in time, labor, and money, constructed a ditch from near the head of the Arkansas river to and upon said mines and placer claims, and completed the same in the fall of 1875 and spring of 1876, so that about 5,000 inches of water could be and was carried therein for a distance of about 11 miles, and at a cost of about forty thousand dollars. And this affiant further says, on oath as aforesaid, that the said Oro Mining, &c., Co., in the year 1876, constructed a bed-rock flume from below the ground taken up by the said affiant and A. B. Wood as aforesaid, in and upon a part of said claims, and completed the same to the bed rock, and thereupon commenced to work and mine the placer claims aforesaid, and that during the mining season since such completion, and up to the date hereof, have continued to work and mine in and upon said
178 claims and extract the gold therefrom, and that the said Oro, &c., company have removed and excavated yards of earth in doing and performing said work, and have expended above sixty-six thousand dollars on the same, and that said company have taken out of said mining claims, in gold, the sum of about eight thousand dollars.

And this affiant further says that said bed-rock flume has been run and is still being run toward the placer mining claim of the said Starr herein described and the placer mining claim of the said Stevens

and Leiter as aforesaid, for the purpose and with the design of assisting in working the same and the development thereof.

And this affiant further says, on oath as aforesaid, that at the time of the purchase of said placer claims that
179 no one in the vicinity of the same supposed or thought that there would be a town built or required in the vicinity of said placer claims, and that said claims were not taken up or purchased for the purpose of speculation, but were so taken up and purchased in good faith for mining purposes.

And this affiant further says, on oath as aforesaid, that in the year 1877, in consequence of the discovery of rich mines of carbonate of lead containing silver within from one to four miles of said placer claims, a great excitement existed in the neghborhood, and during the winter following a number of persons entered upon said Stevens and Leiter placer claims without the consent of this affiant or the said Leiter, and commenced to build cabins thereon; and in consequence of threats of violence and intimidation, and in order avoid the trouble and expense of litigation that would probably ensue, the said Stevens and Leiter entered into a compromise with said persons, whereby they agreed to sell and dispose of to said persons a
180 limited amount of said placer claims for building purposes for a nominal consideration, but little more than enough to cover the actual of procuring a title thereto and making conveyances therefor whenever the said Stevens & Leiter should obtain a patent therefor, and that this compromise was entered into for the purpose of promoting peace and harmony in the community, and not for the purpose of speculation; and that the said Stevens & Leiter will be ready to do and to perform their part of said compromise whenever it is in their power to do so. And this affiant further says on oath as aforesaid that the said Stevens and Leiter are the owners of, and have the control of, a large share of the stock of the said Oro Mining, Ditch, and Fluming Company, and that the said Stevens and Leiter placer claim has been represented annually by working adjoining mining claims in said California mining district as is by the laws, rules, and regulations of said district required, and have in all things complied with the laws of the said district and the
181 state of Colorado and of the United States.

W. H. STEVENS.

Subscribed and sworn to before me this 29th day of June, A. D. 1878, and I hereby certify that the said affiant is a credible person, and the statements made him are entitled to full faith and credit.

A. S. WESTON,
Notary Public.

[SEAL.]

STATE OF COLORADO, } ss.
County of Lake, }

GEORGE L. HENDERSON, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of 21 years,

and a resident of Leadville, Lake county, Colorado, and by occupation a miner. And this affiant further says on oath as aforesaid, that he has been acquainted with the Stevens & Leiter placer claims, so called, in California mining district, in the county of Lake and state of Colorado, and for which William H. Stevens and Levi Z. Leiter have made application for a U. S. patent, for more than 15 years last past, and that he has been engaged in placer mining within
182 one-half mile of said claim during more than six years of said time. And this affiant further says on oath as aforesaid, that from his knowledge and experience as a placer miner that said claims are gold-bearing placer mineral lands, and have been, are, and of right ought to be classified as such.

GEORGE L. HENDERSON.

Subscribed and sworn to before me this 29th day of June, A. D. 1878, and I hereby certify that said affiant is a credible person, and that full faith and credence ought to be given to the statements made by him.

A. WESTON,
[SEAL.] *Notary Public.*

STATE OF COLORADO, }
County of Lake, } *ss.*

THOMAS S. WELLS, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of 21 years, and a resident of Leadville, Lake county, Colorado, and by occupation a miner. And this affiant further says on oath as aforesaid, that he has for more than 15 years last past been acquainted with the Stevens and Leiter placer claim, so called, situate in California
183 mining district, in Lake county, in the state of Colorado, and for which Stevens and Leiter have made application No. 178, and that said claim is gold-bearing placer mineral land, and has been, is, and of right ought to be classified as such. And this affiant further says on oath as aforesaid that the said Stevens and Leiter and their grantors and associates, at a great cost, have constructed a ditch for carrying water to said claims and other claims in the vicinity, and have likewise, at great cost, made and constructed a bed-rock flume to assist in the economical working of these and other mining claims in the vicinity, and that they have expended large sums of money in purchasing said claims. And this affiant further says on oath as aforesaid that he has reason to believe, and does believe that the said Stevens and Leiter claims were appropriated and possessed or purchased by said Stevens and Leiter in good faith as placer mining claim.

THOMAS S. WELLS.

Subscribed and sworn to before me this 28th day of June,
184 A. D. 1878, and I hereby certify that the above affiant is a

credible witness, and that his statements are entitled to full faith and credence.

[SEAL.] A. S. WESTON,
Notary Public.

STATE OF COLORADO, } ss.
County of Lake, }

ANDREW J. HILL, being first duly sworn, deposes and says that he is a citizen of the United States over the age of 21 years, and a resident of Leadville, Lake county, Colorado, and by occupation a miner. And this affiant further says on oath as aforesaid that he has been acquainted with the Stevens and Leiter placer claim, so called, situate in California mining district, in the county of Lake and state of Colorado, and for which an application for a U. S. patent has been made by Stevens and Leiter, being application No. 178, for more than ten years last past, and that the same is gold-bearing placer mineral land, and has been, is, and of right ought to be classified as such. And this affiant further says on oath as aforesaid that the said Stevens and Leiter and their grantors and associates
185 have expended many thousands of dollars in constructing a ditch to convey water to said claims and other claims in the vicinity, and in constructing a bed-rock flume for working the same and in purchasing the said claims.

A. J. HILL.

Subscribed and sworn to before me this 29th day of June, A. D. 1878, and I hereby certify that the above affiant is a credible person, and that *said affiant is a credible person and that* the statements made by him are entitled to full faith and credence.

[SEAL.] A. S. WESTON,
Notary Public.

STATE OF COLORADO, } ss.
Lake county. }

C. W. DERRY, being duly sworn, deposes and says that he is a citizen of the United States, over the age of 21 years, and a resident of the county of Lake and state of Colorado, and by occupation a miner, and that he has been acquainted with the placer claim of Stevens and Leiter, for which an application for a U. S. patent has been made by them, and which is situate in California mining district, in
186 the county of Lake and state of Colorado, and that the same has been, is, and of right ought to be classified as placer mineral land.

C. W. DERRY.

Subscribed and sworn to before me this 25th day of June, A. D. 1878, and I hereby certify that said C. W. Derry is a credible person, and that his statements ought to be believed accordingly.

[SEAL.] A. S. WESTON,
Notary Public.

WASHINGTON CITY, *July 29th*, 1878.

Hon. JAMES A. WILLIAMSON,
Commiss'r Gen'l Land Office.

SIR: As attorneys for Peter Starr, Nelson Hallock, J. D. Griffith, and Thomas Starr, adverse claimants and protestants in the matter of application 178 by Stevens and Leiter for a patent to a placer claim in Fairplay land district, Colorado, and mining entry 154 of said claim, we respectfully enter our appearance, and request the usual time to examine papers and file arguments.

DRUMMOND & BRADFORD,
Attorneys for Peter Starr et al, adverse claimants, &c.

187 (Indorsed:) Drummond and Bradford, city, July 29, 1878; appearance for Peter Starr and other adverse claimants in matter of application 178 by Stevens and Leiter for patent for placer claim; pol. ackd'g'd Aug. 13, 1878; July 10, 1878.

LEADVILLE, *July* 22, 1879.

To the Hon. J. A. WILLIAMSON,
Commissioner Gen. Land Office.

SIR: Thanking you for answer a humble citizen of the United States, (I have to state)—after instructions from the President and Secretary of the Interior—

1st. That my letters copied by you of September 24th and 25th, were written from Fairplay at the suggestion and request of Wm. H. Stevens, and were founded upon statement then made to me *by him*, which the records of the land office, having been forwarded to Washington, did not verify, but which I then conscientiously believed to be true.

2nd. But in March last, at Carson City, that the town plat of the "town of Agassiz had been filed as an adverse claim to Stevens and Leiter application for a placer mining patent, and that instead of such adverse claim having been sent to the courts for trial,
188 that 1,700 had been paid in cash, and an agreement made to convey to the adverse claimant a large number of lots after the patent should be obtained in consideration that this adverse claim should be brought or withdrawn from the consideration of the land office at Fairplay," which was done, and thus no adverse claim went to your office against Stevens and Leiter's application. The name of my informant at Carson City who took an active part in the sale and disposition of the "adverse claim," whenever you desire it for investigation I will give you, and he will furnish conclusive evidence of the truthfulness of the charge as to that specific point.

3rd. As to your averment that the claim of the "town of Agassiz" could not legally be an adverse one to Stevens and Leiter's placer mining claim, I should have been amazed at that averment had I not been familiar with the practices and decisions of your bureau since 1842; for in the case of Theodore H. Beecher to the citizens of Central

City, reported on page 307 of Weeks on Mineral Lands, it ap-
189 pears "that Lincoln's secretary of the interior did in August 7, 1871, make a decision exactly the reverse of your dictum, to wit, that persons in possession of surface ground in Central City, Colorado, as a town site, could claim adversely to an application for a mineral patent, and he further then and there decided, "that in all mining claims, located within the exterior limits of a town, no mineral patent should be granted unless that patent contained the following words and exceptions, viz." Exceptions and excluding, however, from these presents all town property rights upon the surface, and these are "hereby expressly excepted and excluded from the same, all houses, buildings and structures, lots, blocks, streets, alleys and other municipal improvements on the surface of the above-described premises not belonging to the grantees herein, and all rights necessary or proper to the occupation, possession and enjoyment of the same," a most benevolent and equitable exception, guarding the rights of poor citizens like those in Leadville,
190 and protecting them from being robbed of their homes and homesteads under the protection of placer mining patents obtained by fraud; an exception, too, which does not appear in Stevens and Leiter placer mining patent, and which was dropped for considerations wholly unknown to the people of Leadville.

4th. You will pardon me for saying very frankly and forcibly "that I shall furnish no affidavits or charges for your bureau, but when I see my fellow citizens being plundered of their homes under the forms of law, I will repeat the facts to the President and to Gen. Schurz, sec'y of the interior, for both of whom as statesmen, soldiers and officers I have the highest possible veneration and respect, and of the latter of whom, having known him personally and intimately since his arrival in this country, I say unhesitatingly "that he is the peer of the greatest and best man in our nation." Let me add one thing more and I have done; although a republican from the very beginning and down to the present time, yet I blush that even under the present administration
191 most infamous frauds are constantly perpetrated under the forms of law in both the Indian and Land Departments in Washington, whereby the hardy pioneers of these mining camps and the poor Indians are plucked and plundered of their homes, their camps and their wigwams by just such frauds as have given to 4 or 5 speculators here through placer mining patents in this camp hundreds of acres of city lots, with the houses, streets and improvements erected thereon long anterior to the date of these fraudulent grants, whereby the pioneer, the miner, and the poor man is plucked and robbed to increase the millions of land sharks and robbers. By God's blessing I will be in Washington in December, when I will go before the committee on public lands and furnish them with the names of witnesses who will testify to them; that nearly all this region around Leadville has been or is now being absorbed by fraudulent placer mining claims by which the land is cut

up into city lots and sold at extortionate prices with the homes
192 of the citizens thereon as speculative town property the moment that a placer mining patent is obtained.

I am, sir, your peer, and an American citizen who knows the rights of pioneers and miners.

Respectfully, GEORGE C. BATES,
Att'y and Counsellor at Law.

(Indorsed:) Geo. C. Bates, Leadville, Col., July 22nd, 1879. In relation to Stevens and Leiter's placer claim. A.

WASHINGTON, D. C., *August* 13, 1878.

Hon. JAS. A. WILLIAMSON,
Commissioner Gen. Land Office.

SIR: As attorneys for adverse claimants and protestants in the matter of the application of Stevens and Leiter for a patents to a placer mining claim in the Fairplay land district, upon which mineral entry No. 154 was erroneously allowed by the register and receiver—

We respectfully ask a suspension of all proceeding upon the said application until the pending between the said adverse claimants and said applicants shall have been decided and settled by the courts.

The papers on file in the case show: 1st. That several adverse
193 claims in due form and showing a conflict with the premises applied for were made and filed in form, manner, and time prescribed by law.

Second. That Peter Starr, one of the adverse claimants, commenced a suit in the proper court within thirty days after filing his adverse claim to determine the right of possession to the premises in conflict, and that the same is still pending and undecided.

Third. That notwithstanding said adverse claims and commencement of said suit, the register and receiver allowed said applicants to make final entry of the premises applied for on the alleged ground that said adverse claimants had not filed in their office a certificate showing the commencement of suit in the time prescribed by law, and that the applicants had filed a certificate showing that suit had not been so commenced. This action on the part of the register and receiver was unquestionable erroneous, unauthorized, and contrary to law, because—

First. The failure of an adverse claimant to file a certifi-
194 cate or other evidence showing that suit has been commenced, does not relieve an application for a mining patent from the suspension caused by his adverse claim.

Second. Applicants in this case had not filed a certificate or other evidence that suit had not been commenced in time, as alleged by the register and receiver. In support of the proposition that the failure of an adverse claimant to file evidence that suit has been commenced, or does not relieve a case from suspension, we need only to refer to sections 2326 Revised Statutes of the United States,

which clearly provides when an adverse claim in proper form is filed during the period of publication, and suit is commenced by the party to the adverse claim within thirty days thereafter, to determine the right of possession to the premises in conflict, proceedings shall be stayed until the controversy has been settled by the courts, unless the adverse claimant shall fail to prosecute his suit with reasonable diligence.

In other words the section provides that the filing of an adverse
195 claim in due form, manner, and time, shall of itself work a suspension of proceedings on the application; and that the commencement of a suit in time and its prosecution with reasonable diligence shall continue the suspension and bar proceedings in the land office until the courts have finally decided the controversy between the adverse claimant and the applicant. Nothing else is necessary to work and continue such a suspension or create such a bar. The bar does not either expressly or by the remotest implication require an adverse claimant to give notice to the register and receiver that he has commenced a suit, and he waives no right by a failure to do so. If he fails to commence his suit, &c., and that fact is shown, it may be treated as a waiver of his adverse claim, and proceeding may be resumed by the land office because of such waiver, but having commenced suit in form, manner, and time prescribed by law, a mere failure to give notice thereof works no forfeiture of rights, for the law does not prescribe that such notice shall be given, or that a failure to
196 give it shall be treated as a waiver of an adverse claim. When an adverse claimant does what the law specifies and requires, he is entitled to all the protection that the law can give him. One of the rights guaranteed to him by law is that proceedings shall be suspended in the land office until his claim has been passed upon by the courts, and therefore, pending proceedings in the courts, the land office remains without jurisdiction or power to proceed with the application, and it cannot by imposing upon an adverse claimant conditions not known to or authorized by law regain jurisdiction so as to proceed with the application to his injury or deprive him of any right. It cannot hold him to be in default or subject him to a forfeiture of rights unless it is first shown and established that he has failed to comply with the requirements of law. The law is paramount, and must govern and control the action of the land office; outside of it the office is without power or jurisdiction, and what it does without authority of law is illegal and void or merely advisory.

197 It is clear, therefore, that the allowance of the entry in this case by the register and receiver was erroneous and illegal and that it must be treated as a nullity; and that all further proceedings on the application must be stayed until the suit commenced by Starr has been finally decided by the courts or it has been shown that he has not prosecuted the same with reasonable diligence, for until then the land office will be without jurisdiction. The allowance of the entry by the register and receiver, on the ground that the adverse claimant had failed to furnish them evidence of the commencement

of suit, was not only contrary to law but to the regulations of your office, for neither the law nor the regulations issued pursuant thereto required such evidence or authorized such action on the part of the register and receiver, but they acted wholly without authority. We are aware that Commissioner Burdette in a letter to Beatty and Clements dated August 6th, 1875, Copp's Land Owner for September, 1875, page 82, expressed the opinion that in case an adverse
198 claimant failed to file, at the local office, evidence that suit had been commenced in court, the register and receiver were bound to presume that the adverse claim had been waived and to act accordingly. This opinion was evidently given without due consideration and is unquestionably erroneous and contrary to law; but independent of these fact that it is erroneous, it has never been embodied in or made a part of the official regulations of the office, as published, to guide and govern adverse claimants, and has never been brought to their attention in any authorized form or legal manner. It is not even a decision in the case but a mere opinion in a letter to private parties, never communicated officially to registers and receivers, or prescribed in any legal manner to govern either the action of parties or officers. It would, therefore, be absurd, oppressive and unjust to apply this opinion as a rule applicable to adverse claimants and to impose forfeitures for a violation of it. It has never been made a rule of the land office now published as such,
199 and should it ever be, a violation of it could not be held to be a forfeiture of rights, as it would be simply directory, without the force and effect of law. We can readily see how the commissioner might, as a matter of convenience in practice, embody in regulations a rule advising and directing adverse claimants to give notice of the commencement of suits, but he certainly cannot treat them as in default until he does so, and even then he cannot enforce the rule by declaring the forfeiture of rights, for he has no power or authority to make a failure to give such notice a waiver of an adverse claim or any other right. The law clearly defines and specifies what shall constitute a waiver of an adverse claim when filed, and the commissioner of the land office can neither add to nor amend the law in this respect by *law in this respect by* regulations or otherwise. He cannot, therefore, treat the failure of an adverse claimant to give notice of the commencement of suit as a waiver of an adverse claim, nor can the failure to give such notice be construed into a presumption that suit has not been commenced. On the con-
200 trary, as the law provides for the commencement of suit by an adverse claimant within thirty days after he has filed an adverse claim, it must be presumed in the absence of evidence to the contrary that he has done so, and proceedings under the application must remain suspended, for where the law requires a party to do a thing it must be presumed until the contrary is proved that he has obeyed the mandates of the law, and he cannot be held or treated as in default unless the presumption is overcome by satisfactory evidence of a non-compliance. Where a party seeks to take

advantage of a non-compliance with law on the part of another, he must establish the fact of such non-compliance. The burden of proof is always in him. Therefore, when an applicant seeks to relieve a case involving the right to a mining patent from suspension on the ground that an adverse claimant is in default in the matter of the commencement or prosecution of a suit, he must prove and establish the default.

He cannot require the adverse claimant to show that he is
201 not in default, nor can it be presumed that he is in default from his failure to show the contrary—this would not only be contrary to all established and recognized rules of evidence, but contrary to equity.

In support of our statements that applicants in this case had not filed a certificate or other evidence that suit had not been commenced in time, we would invite your attention to the fact that the adverse claim of Starr was filed on the 27th day of May, 1878, and that the certificate introduced by applicants was dated June 25th, A. D. 1878, only 29 days after the filing of the adverse claim. The time for commencing the suit had not then expired, and therefore the certificate of the clerk made on that day, if true, did not show that suit had not been commenced in time, or justify the action of the register and receiver. Suit commenced any time during that or the two next days would have been in time, and we have shown by a certificate from the clerk that suit was commenced on or before the
202 25th of June, 1878. The adverse claimants are unquestionably entitled to a suspension of further proceedings in this case, and we ask that no further action be taken until the suit commenced by Starr has been finally decided by the court, unless it be to cancel the entry of applicants, which adverse claimants have a right to have removed from the records, because it was allowed and made not only in violation of their rights, but of law.

Respectfully,

DRUMMOND & BRADFORD,
Att'ys for Peter Starr et al., Adverse Claimants and Protest'ts.

DENVER, *Sep.* 25, 1878.

Gen. CARL SCHURZ.

MY DEAR SIR: If you will call the attention of the Comm'r Gen'l Land Office to the certificate this day sent by me to him by register and receiver at Fairplay, Colorado, touching Stevens and Leiter's survey No. 371, and will ask the Commissioner for a prompt answer in the premises, you will prevent a collision at Leadville, possibly save bloodshed, and do me the very great favor on earth. I
203 am here at work in the law, and Stevens is one of my old Lake Superior miners and Leiter is the merchant prince of Chicago. All I ask is a prompt decision by the Commissioner, as Leadville has now over 6,000 people, and jumping and shooting is likely to occur.

Yours truly, GEO. C. BATES,
Att'y at Law.

UNITED STATES LAND OFFICE, } ss.
Fairplay, state of Colorado, }

In the matter of the application of William H. Stevens and Levi Z. Leiter for a United States patent, called placer mine survey No. two hundred and seventy-one (271), and the land appertaining to said survey, situate in California gulch mining district, county of Lake and state of Colorado.

To the register and receiver of the United States land office at Fairplay and to the above-named applicants for patent for the said placer mine survey No. 271:

204 You are hereby notified that Thomas Starr, of the county of Lake and state of Colorado, a citizen of the United States of America, over the age of 21 years, is the lawful owner of and entitled to the possession and enjoyment of a large portion of the land and premises contained and embraced in and described in said application, to wit, thirty-nine 10-100 (39 10–100) acres, as shown by the diagram posted on said claim and the copy thereof filed in the land office with said application, and as such owner this contestant, the said Thomas Starr, does protest against the issuing of a patent thereon to said applicants, and does dispute and contest the right of said applicants therefor.

And this contestant does present the nature of his protest and claim and does fully set forth the same in the affidavit hereto attached, marked Exhibit "A," and the further exhibits thereto attached and made a part of said affidavit.

The said Thomas Starr therefore respectfully asks the said register and receiver that further proceedings in the matter be
205 stayed.

THOMAS STARR.

Leadville, Lake county, Colorado, May 16, A. D. 1878.

Exhibit "A."

STATE OF COLORADO, } ss.
County of Lake, }

Thomas Starr, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of 21 years, and now residing in the town of Leadville, county and state as aforesaid; that he is the contestant and protestant named in and who subscribed the notice and protest hereto annexed. Affiant further says that he is the owner by pre-emption and in possession of the Starr's addition; that the said town site is situated in the California gulch mining district, Lake county and state of Colorado, and is part of the ground claimed by William H. Stevens and Levi Z. Leiter as a placer claim, survey No. 271, (two hundred and seventy-one.)

This affiant further says that on the tenth day of April, A. D. 1878, and while the same was a part of the public domain and open to

settlement and pre-emption, your protestant located and pre-
206 empted, according to the laws of the United States concerning town sites upon the public domain, the Starr's addition; that the said premises so located and appropriated consist of thirty-nine 10-100 (39 10-100) acres, as will more fully appear by the certificate of pre-emption, a duly-certified copy of which is hereunto annexed, marked Exhibit B and made a part of this affidavit. And the said locator after locating and pre-empting the said town site surveyed the same, and staked the corners of the said town site, as provided by law, and after doing all the acts required by law the locator of said town site caused notice to be filed and recorded in the proper books of record in the recorder's office in said county of Lake and state of Colorado on the tenth day of April, A. D. 1878.

Affiant further says that the said locator, Thomas Starr, and his assigns have remained continuously in the rightful and undisputed possession of said town site from the time of the location as aforesaid up to the present time.

And the record title to the said Starr's addition is in his
207 affiant, as will fully appear by reference to the abstract of title and papers hereto attached marked Exhibit B.

Affiant further says that said placer claim called placer mine survey No. two hundred and seventy-one (271), and shown by the notice and diagram posted on said claim and the copy thereof filed in the United States land office at Fairplay with said application for a patent, overlaps and infringes upon said town site and embraces about thirty-nine and 10-100 (39 10-100) acres of the said Starr's addition, the property of this affiant, as fully appears by reference to the map hereto attached marked Exhibit "C" and the copy of the same heretofore filed in said land office and in the general land office at Washington, and which map presents a correct description of the relative locations of the said town site and of the pretended placer claim; and this affiant further says that at the time of the location of the pretended placer claim as set forth in their plact and field-notes and notice of entry as above the said William H. Stevens and Levi
208 Z. Leiter not only failed to comply with the local laws, rules and customs of mines in California gulch mining district, the laws of the state of Colorado and the statutes of the United States, but long since that time and before doing the work and improvements required by law to hold, enjoy, and possess a placer claim, the said William H. Stevens and Levi Z. Leiter surveyed and platted a large portion of the said pretended placer claim as a town site or as an addition to the town of Leadville, Lake county, Colorado.

And this affiant further says that the town of Leadville, Lake county, Colorado, a town having a population of about 1500 people, was duly incorporated as a town under the laws of the state of Colorado on day of , A. D. 1878, and the tract of land embraced in the Starr's addition was made a part of and included in the incorporate limits of the town of Leadville, and that there now reside in that portion of the town within the boundary lines of the Starr's

addition upwards of ten inhabitants; and affiant further says
209 that this protest is made in entire good faith, and with the sole object of protecting the legal rights and property of this affiant in the said town-site property; and your affiant further says that he, the said Thomas Starr, has complied with the statutes of the United States concerning town sites, and that the said plat and record of the said Starr's addition it bona fide and truly appropriated, occupied, and possessed as a town site; therefore I, your affiant, against the government of the United States issuing to the said William H. Stevens and Levi Z. Leiter a United States patent for any part of the land embraced in the said town site; and your affiant pray that you except and exempt from entry by the said William H. Stevens and Levi Z. Leiter all the lots, blocks, streets, alleys, houses, buildings and premises embraced in and on the said Starr's addition.

THOMAS STARR.

Subscribed and sworn to before me this 12th day of May, A. D. 1878, and I hereby certify that the deponent is a respectable
210 person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

STATE OF COLORADO, }
County of Lake, } *ss.*

Reily Miller, being duly sworn according to law, deposes and says he is over the age of 21 years, is a citizen of the United States, and of the county and state aforesaid; that he is well acquainted with the town of Leadville, county and state aforesaid; that he has passed through said town with a view of learning the facts herein stated; that the said town now contains about 1200 inhabitants; that the improvements upon the lots and blocks of said town, consisting of stores, offices, and dwellings to the value of at least twenty thousand dollars; that upon that portion of said town known as Starr's addition, containing 39 10-100 acres, and owned by Thomas Starr, there a number of residences now complete and being erected, to wit, about five, and that said addition is very valuable to said town of Leadville for residence purposes, being much more
211 valuable and useful as an addition to said town than for mining and agricultural purposes.

REILY MILLER.

Subscribed and sworn to before me this 7th day of May, 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

D. HOUGHTON,
Notary Public.

COUNTY OF LAKE, } ss.
State of Colorado, }

J. D. Griffith, being duly sworn according to law, deposes and says that he is over the age of 21 years; is a citizen of the United States and of the county and state aforesaid; that he is well acquainted with the character of the land embraced in the Starr addition to the town of Leadville, embracing 39 10-100 acres, the same being claimed and owned by Thomas Starr.

That having frequently passed over the same and examined it with regard thereto; that there is not to his knowledge any paying placer or any deposits of gold, silver or cinnabar on lodes or ledges within the limits of said land, and that the land embraced in
212 the said Starr addition is of much more value and use as the site for a town than for mining or agricultural purposes.

J. D. GRIFFITH.

Subscribed and sworn to before me this 7th day of May, A. D. 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

COUNTY OF LAKE, } ss.
State of Colorado, }

F. D. Hayden, being first duly sworn, deposes and says that he is over the age of 21 years; is a citizen of the United States and of the county and state aforesaid; that he is well acquainted with California gulch mining district, situate in said county of Lake, and with the improvements, houses, stores and residences that have been for a long time, that is for at least ten years last past, situate at or near the present site of the town of Leadville, and being well acquainted with the surrounding country; that there is not another location as favorable for a town near the mines now working as the
213 present town site of Leadville, included in which is the land claimed and owned by Thomas Starr, and known as Starr's addition, containing 39 10 100 acres; that the said Starr's addition is much more valuable for town site purposes than for mining or agricultural purposes.

F. E. HAYDEN.

Subscribed and sworn to before me this 7th day of May, A. D. 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

Abstract of Title

to the town site made and located by Thomas Starr, situated in California gulch mining district, county of Lake and state of Colorado.

Certificate of Location.

COUNTY OF LAKE, } ss.
State of Colorado, }

Book 10, page 393.]

Know all men by these presents that I, Thomas Starr, a citizen of the United States, have this day filed upon a certain piece of unoccupied government land for the uses and purposes of a town
214 site, and claim the same under and by virtue of sections No. 2387, 2388, 2389 and 2394 of the Revised Statutes of the United States, and under and by virtue of other laws of the United States and the state of Colorado concerning town sites on the public land, said piece or parcel of land hereby and herein claimed, and filed upon, pre-empted and located, is particularly described as follows, to wit:

Beginning at cor. No. 1, which bears from cor. No. 1, survey No. 255, S. 72 deg. 10 min. W. 1000 feet; thence north 50 deg. 30 min. E. 500 feet to corner No. 2; thence north 45 deg. E. to corner No. 3; thence north 57 deg. 23 min. E. 500 feet to corner No. 4; thence north 57 deg. 15 min. E. 500 feet to corner No. 5; thence north 52 deg. E. 500 feet to corner No. 6; thence north 50 deg. E. 500 feet to corner No. 7; thence north 60 deg. E. 500 feet to corner No. 8; thence north 62 deg. E. 608 feet to corner No. 9; thence north 13 deg. 10 min. W. 507 5-10 feet to corner No. 10; thence south 62 deg. west 838 feet to corner No. 11; thence south 60 deg. W. 500 feet to corner No. 12; thence south 50 deg. W. 500 feet to corner No. 13; thence south 52 deg. W. 500 feet to corner No.
215 14; thence south 57 deg. 15 min. W. 500 feet to corner No. 15; thence south 57 deg. 23 min. W. 500 feet to corner No. 16; thence south 45 deg. W. 500 feet to corner No. 17; thence south 50 deg. 30 min. W. 500 feet to corner No. 18; thence south 39 deg. 30 min. E. 500 feet to the place of beginning, containing 39 10-100 acres, more or less, variation in all courses 15 deg. E., situate, lying and being in California gulch mining district, county and state aforesaid.

Witness my hand this tenth day of April, A. D. 1878.

THOMAS STARR.

Recorded April 10th, A. D. 1878, at 6 p. m.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the certificate of location of the town site located by Thomas Starr, and all that appears of record concerning the said property, as now remains of record, now in my office.

Given under my hand and official seal this 6th day of May, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Clerk and Recorder.

216 (Endorsed:) "Adverse No. 3; filed in the U. S. land office at Fairplay, Colorado, May 26th, 1878; John J. Henry, register."

[Here follows map marked page 217.]

218 UNITED STATES LAND OFFICE,
FAIRPLAY, STATE OF COLORADO.

In the matter of the application of Wm. H. Stevens and Levi Z. Leiter for a United States patent called placer mining survey No. 271, and the land appertaining to said survey, situate in the California gulch mining district, county of Lake and state of Colorado.

To the register and receiver of the United States land office at Fairplay, and to the above-named applicants for patent for the said placer mine, survey No. 271:

You are hereby notified that Nelson Hallock and J. D. Griffith, both of the county of Lake and state of Colorado, and citizens of the United States of America, over the age of 21 years, are as trustees, for the benefit of the occupants and settlers, the lawful owners of, and entitled to the possession and enjoyment of, a large portion of the land and premises contained and embraced in and described in said application, to wit:

219 Fifty-three and 56-100 (53 56-100) acres, as shown by the diagram posted on said claim, and the copy thereof filed in the land office with said application, and as such owners these contestants, the said Nelson Hallock and J. D. Griffith, do protest against the issuing of a patent thereon to said applicants, and do dispute and contest the right of said applicants therefor.

And these contestants do present the nature of their protest and claim, and do fully set forth the same in the affidavit hereto attached, marked Exhibit A, and the further exhibits thereto attached and made part of said affidavit.

The said Nelson Hallock and J. D. Griffith, as said trustees, therefore respectfully ask the register and receiver that all further proceedings in the matter be stayed.

Leadville, Lake county, Colorado, May 16, 1878.

NELSON HALLOCK.
J. D. GRIFFITH.

Exhibit A.

STATE OF COLORADO, *County of Lake,* } *ss.*

Nelson Hallock and J. D. Griffith, being first duly sworn, depose

and say that they are citizens of the United States, over the
220 age of 21 years, and now reside in the town of Leadville,
county and state as aforesaid; that they are the contestants and protestants named in and who subscribed the notice and protest hereto annexed.

Affiants further say that they are the owners by pre-emption and in possession of the town site of Leadville as trustees; that said town site is situated in the California gulch mining district, Lake county and state of Colorado, and is part of the ground claimed by William H. Stevens and Levi Z. Leiter as a placer claim, called placer mine survey No. 271.

These affiants further say that long prior to the application of the said William H. Stevens and Levi Z Zeiter for patent of the United States, to wit, on the 10th day of December, A. D. 1877, and while the same was a part of the public domain and open to settlement and pre-emption, your protestants, together with George E. Gegge, who was a citizen of the United States, over the age of 21, did, as trustees for and in behalf of the settlers on a certain piece of land,
locate and pre-empt, according to the laws of the United
221 States concerning town sites upon the public domain, the citizens' town site of Leadville; that the said premises so located and appropriated consist of 53 56-100 acres of land, as will more fully appear by the certificate of pre-emption, a duly certified copy of which is hereunto annexed, marked "Exhibit B." and made a part of this affidavit; and the said locators, after locating and pre-empting the said town site, surveyed the same and staked the corners of the said town site, as provided by law; and after doing all the acts required by law, the locators of said town site caused notice to be filed and recorded in the proper books of record in the recorder's office in said county of Salt Lake and state of Colorado, on the 19th day of December, A. D. 1877.

Affiants further say that the said locators and their assigns remained continuously in possession of said town site, and they so continued in the rightful and undisputed possession thereof from the time of said location until on or about the 5th day of April, A. D.
1878, at which time George E. Gegge, one of the locators as
222 aforesaid, assigned all his interest in the said town site to your contestants and protestants, Nelson Hallock and J. D. Griffith, and that since that time until the present your contestants and protestants, Nelson Hallock and J. D. Griffith, have continued in the rightful and undisputed possession thereof until the present time; and the record title to said citizens' town site of Leadville is in these affiants, as will fully appear by reference to the abstract of title and papers hereto attached, marked "Exhibit B."

Affiants further say that said placer claim, called placer mine survey No. 271, as shown by the notice and diagram posted on said claim and the copy thereof filed in the United States land office at Fairplay with said application for a patent, overlaps and infringes upon the said town site, and embraces about 53 56-100 acres of the

said citizens' town site of Leadville, the property of these affiants, so fully appears by reference to the map hereto attached, marked Exhibit "C," and the copies of the same heretofore filed in said land office and the general land office at Washington, and which
223 map presents a correct description of the relative locations of the said town site and of the pretended placer claim. And these affiants further say that at the time of the location of the pretended placer claim, as set forth in their plat and field notes and notice of entry as above, the said Wm. H. Stevens and Levi Z. Leiter not only failed to comply with the local laws, rules, and customs miners in California gulch mining district, the laws of the state of Colorado, and the statute of the United States, but long since that time and before doing the work and improvements required by law to hold, enjoy, and possess a placer claim, the said William H. Stevens and Levi Z. Leiter surveyed and platted a large portion of the said pretended placer claim as a town site or as addition to the town of Leadville, Lake county, Colorado.

And these affiants further say that the town of Leadville, Lake county, Colorado, a town having a population of about 1,500 people, was duly incorporated as a town under the laws of the state of Colorado, on the 26th day of February, A. D. 1878, and that the
224 tract of land embraced in the citizens' town site of Leadville was made a part of and included in the incorporate limits of the said town of Leadville, and that there now reside in that portion of the town within the boundary lines of the citizens' town site of Leadville upwards of three hundred people.

And affiants further say that protest is made in entire good faith, and with the sole object of protecting the legal rights and property of these affiants and said occupants and settlers in the said town-site property.

And your affiants further say that they, the said Nelson Hallock and J. D. Griffith, have complied with the statute of the United States concerning town-sites, and that the said plat and record of the said town-site of Leadville is bona fide and truly appropriated, occupied, and possessed as a town-site; therefore we, your affiants, protest against the Government of the United States issuing to the said William H. Stevens and Levi Z. Leiter a United States pat-
225 ent for any part of the said citizens' town-site of Leadville; and we, your affiants, pray that you except and exempt from entry by the said William H. Stevens and Levi Z. Leiter all the lots, blocks, streets, alleys, houses, buildings, and premises embraced in and on the said citizens' town-site of Leadville.

NELSON HALLOCK.
J. D. GRIFFITH.

Subscribed and sworn to me this 16th day of May, A. D. 1878, and I hereby certify that the deponents are respectable persons, to whose affidavits full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

Know all men by these presents that I, George E. Gegge, of the county of Lake and state of Colorado, in consideration of the sum of one dollar to me in hand paid (the receipt is hereby acknowledged) by Nelson Hallock and J. D. Griffith, both of the said county of Lake and state of Colorado, have assigned, and do by these presents assign to the said Nelson Hallock and J. D. Griffith all my right, title, and interest in and to the land and premises contained in the
226 so-called citizens' plat of the town of Leadville, the same containing 53 and 56-100 acres, and filed for record in the office of the county clerk of said Lake county, state of Colorado, March 11th, 1878, and all my right, title, and interest in the pre-emption of said town of Leadville, the said pre-emption being the same location certificate filed by said Nelson Hallock, J. D. Griffith, and myself as trustees, and recorded in book 10, page 257, on the records of the county of Lake and state of Colorado, December 19th, A. D. 1877, excepting always that portion of said plat which I own, occupy, and possess in my own proper person and right.

And I hereby constitute the said Nelson Hallock and J. D. Griffith my assignees, with full power to take all legal measures in the premises that may be necessary to the full enjoyment of the premises, powers, and rights herein granted. I also herein and hereby give and grant to my said assignees full power of substitution and revocation. In testimony whereof I hereunto set my hand and seal this the fifth day of April, A. D. 1878.

In *pursuance* of) GEO. E. GEGGE. [SEAL.]

227 STATE OF COLORADO, } *ss.*
County of Lake, }

I, Charles E. Anderson, a notary public within and for the county aforesaid, in the state of Colorado, do hereby certify that Geo. E. Gegge, who is personally known to me to be the same person whose name is subscribed to the within assignment, appeared before me this day in person and acknowledged the execution thereof as his voluntary and deed.

Witness my hand and notarial seal this 5th day of April, A. D. 1878.

[SEAL.] CHARLES E. ANDERSON,
Notary Public.

(Endorsed:) Assignment Geo. E. Gegge to Nelson Hallock and J. D. Griffith; state of Colorado, county of Lake, ss. Filed for record at 10 a. m. May 11, A. D. 1878, a. m.; recorded in book D, page 160. Jos. H. Wells, recorder. Fees, 1.75.

[Here follows map marked page 228.]

229 UNITED STATES LAND OFFICE,
FAIRPLAY, STATE OF COLORADO.

In the matter of application of William H. Stevens and Levi Z. Leiter for a United States patent called placer mine survey No. two hundred and seventy-one (271), and the land appertaining to said survey, situated in California gulch mining district, county of Lake and state of Colorado.

To the register and receiver of the United States land office at Fairplay, Colorado, and to the above-named applicants for patent for the said placer mine survey No. 271:

You are hereby notified that Peter Starr, of the town of Leadville, county of Lake and state of Colorado, and a citizen of the United States of America, over the age of 21 years, is the lawful owner and entitled to the possession of a large portion of the said placer claim at No. 271, to wit, ninety-two and sixty-six one-hundredths acres (92.66), more or less, as shown by the diagram posted on said claim and the copy thereof filed in the land office
230 with said application; and as such owner this contestant, the said Peter Starr, does protest against the issuing of a patent thereon to said applicants, and does dispute and contest the right of said applicants therefor. And this contestant does present the nature of his adverse claim, and does fully set forth the same in the affidavit hereto attached, marked Exhibit "A," and the further exhibits thereto attached and made a part of said affidavit. The said Peter Starr therefore respectfully asks the said register and receiver that all further proceedings in the matter be stayed until a final settlement and adjudication of the rights of this contestant can be had in a court of competent jurisdiction.

Leadville, Lake county, Colorado, May 16th, A. D. 1878.

PETER STARR.

Exhibit "A."

STATE OF COLORADO, } ss.
County of Lake, }

Peter Starr, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of 21 years, and now residing in Leadville, county and state as aforesaid; that he is
231 the contestant and protestant named in and who subscribed to the notice and protest hereto annexed. Affiant further says that he is the owner by purchase and in possession of the original Peter Starr placer claim and the part owner of and in possession of the Nye placer claim, which two claims have been consolidated by purchase, and the two claims are now known as the Peter Starr placer claim, containing ninety-two and sixty-six one-hundredths (92.66) acres, more or less, as shown on the map hereto attached. That the said placer claims are in the California gulch mining district, Lake county, state of Colorado.

This affiant further says that on the day of its location the prem-

ises were mineral lands of the public domain and entirely vacant and unoccupied, and were not owned or held by any party as mining ground, and while the same was so vacant and unclaimed they were located as follows, to wit: The original Peter Starr placer claim, consisting of thirty-nine and ten one-hundredths (39.10) acres, more or less, was duly located according to law, on November 7th, A. D. 1867, and the locators and their assigns remained continu-
232 ously in possesssion of the said claim until the 10th day of August, A. D. 1877, at which time Peter Starr, James McPhelemy, jr., and Roger McPhelemy relocated the said original Peter Starr placer claim to cure a defect in the title, as provided by the laws of the state of Colorado, and from that time the said Peter Starr, James McPhelemy, jr., and Roger McPhelemy remained continuously in the rightful possession of the same until the 13th day of May, A. D. 1878, at which time the said James McPhelemy, jr., and Roger McPhelemy conveyed all their right, title, and interest in and to the said placer claim to the said Peter Starr, from which time until the present he has remained in the rightful possession of the same, all of which will more fully appear by reference to the abstract of title of the original Peter Starr placer claim hereto attached, and marked Exhibit "B." The Nye placer claim, consisting of fifty-three and 56-100 (53.56) acres, more or less, was duly located according to law on the 10th day of April, A. D. 1878, by William Nye, Reuben Frazer, and J. F Evans, and notice thereof was duly recorded in
233 the proper books of record in the recorder's office in said county, on the 10th day of April, A. D. 1878, a duly certified copy of which notice is hereto attached and marked Exhibit "C," and the said locators remained continuously in the rightful possession of the said Nye placer claim until the 13th day of April, A. D. 1878, at which time the said Nye and Reuben Frazer conveyed unto your affiant, Peter Starr, the undivided two-thirds part of the said Nye placer claim, and from that time until the present the said Peter Starr has remained continuously in the rightful possession of the same, all of which will more fully appear by reference to the abstract of title to the Nye placer claim, hereto attached and marked Exhibit "C."

Affiant further says that the said placer claim called placer mine survey No. two hundred and seventy-one (271), as shown by the notice and diagram posted on said claim, and the copy thereof filed in the United States land office at Fairplay with said application for a patent, overlaps and infringes upon the said Peter Starr
234 placer claim about ninety-two and sixty-six one-hundredths (92.66) acres more or less, the property of this affiant by location and purchase; as fully appears by reference to the map duly certified by George W. Nyce, United States deputy surveyor, hereto attached, marked Exhibit "H," and which presents a close description of the relative locations of the said Peter Starr placer claim and the placer mine survey No. 271; and this affiant further says that

the said William H. Stevens and Levi Z. Leiter have failed to comply with the local forms, rules, and customs of miners in California gulch mining district, the laws of the state of Colorado, and the statutes of the United States.

And this affiant further says that this protest is made in entire good faith, and with the sole object of protecting the legal rights and property of this affiant in the said Peter Starr placer claim.

PETER STARR.

Subscribed and sworn to before me, this 16th day of May, A. D. 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
235 *Notary Public.*

Book C, page 342.]

Know all men by these presents, that I, Lucius Bradshaw, have this day bargained, sold and transferred all my right, title and interest in and to the following deserted mining property, to wit: Claims No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, situated in Stray-horse gulch, California mining district, Lake county, Colorado territory, unto Peter Starr, for and in consideration of five hundred dollars cash in hand received, the receipt of which I hereby acknowledged.

Given unto my hand and seal this 21st day of May, A. D. 1875.

LUCIUS BRADSHAW. [SEAL.]

Witness: L. D. BREECE.

STATE OF COLORADO, }
County of Lake, } *ss.*

Personally appeared before me, William McDermit, a justice of the peace in and for county and territory above named, L. Bradshaw, to me known as the person who signed the above deed and acknowledged that he done it of his own free will and accord for the
236 purposes therein named.

Witness my hand and seal this 21st day of May, A. D. 1875.

WILLIAM McDERMIT,
Justice of the Peace.

Recorded December 24th, A. D. 1877, at 1 p. m.

STATE OF COLORADO, }
County of Lake, } *ss.*

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a deed given by Lucius Bradshaw to Peter

Starr, as appears of record in book C, page 344, of the Lake county records, as now remains of record now in my office.

Given under my hand and official seal this 9th day of May, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Recorder.

Exhibit "B."—Book 10, page 126.

STATE OF COLORADO, }
County of Lake, } *ss.*

Known all men by these presents, that we, the undersigned, do claim by purchase 5803 acres of placer mining ground situated in
237 California mining district, county and state aforesaid, and we hereby on this 10th day of August, A. D. 1877, for the purpose of defining the location and extent of said placer claim, have relocated the following described premises:

Beginning at corner No. 1, being the N. W. corner of the Weston and Pauls claim, which bears from corner No. 1 of the Oro Mining and Fluming corner No. 1 S. 72 deg. 10 min. W. ft., which bears from U. S. location monument No. 1 N. 89 degrees 45 minutes W. 418 feet; thence N. 50 degrees 30 minutes E. 500 feet to corner No. 2; thence N. 45 degrees E. 500 feet to corner No. 3; thence N. 57 degrees 23 minutes E. 500 feet to corner No. 4; thence N. 57 degrees 15 minutes E. 500 feet to corner No. 5; thence N. 52 degrees E. 500 feet to corner No. 6; thence N. 50 degrees E. 500 feet to corner No. 7; thence N. 60 degrees E. 500 feet to corner No. 8; thence N. 62 degrees E. 603.5 feet to west line of T. Starr's claim, 666.5 feet to east line of said claim, 1,000 feet to corner No. 9; thence N. 68 degrees 30 minutes E. 500 feet to corner No. 10; thence N. 75 degrees 45 minutes E. 500 feet to corner No. 11; thence S. 67 degrees 51 minutes E. 500 feet to corner No. 12; thence S. 70 degrees E. 500 feet to corner No. 13; thence N. 39 degrees 30 minutes W. 500 feet to corner No. 14; thence N. 70 degrees W. 500 feet to corner No. 15; thence N. 69 degrees 51 minutes W. 500 feet to corner No. 16; thence S. 75 degrees 45 minutes W. 500 feet to corner No. 17; thence S. 68 degrees 30 minutes W. 500
238 feet to corner No. 18; thence S. 62 degrees W. 114.5 feet, east line of T. Starr's claim 167.2 feet, west line of T. Starr's claim 1,000 feet to corner No. 18; S. 60 degrees W. 500 feet to corner No. 20; thence S. 50 degrees W. 500 feet to corner No. 21; thence S. 52 degrees W. 500 feet to corner No. 22; thence S. 57 degrees 15 minutes W. 500 feet to corner No. 23; thence S. 57 degrees 23 minutes W. 500 feet to corner No. 24; thence S. 45 degrees W. 500 feet to corner No. 25; thence S. 50 degrees 30 minutes W. 500 feet to corner No. 26; thence S. 39 degrees 30 minutes E. 500 feet to the place of begenning.

Dated this 20th day of August, A. D. 1877.

JAMES McPHELEMY.
ROGER McPHELEMY.
PETER STARR.

Recorded August 30th, A. D. 1877, at 7 p. m.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the certificate of location of the placer claim of James McPhelemy et al. as appears of record in book 10, page 126, of said Lake county record now remaining in my office.

Given under my hand and official seal this 9th day of May, A. D. 1878.

239 [SEAL.] JOS. H. WELLS,
Clerk and Recorder.

This indenture, made this 13th day of , A. D. 1878, by and between James McPhelemy, jr., and Roger McPhelemy, of the county of Lake and state of Colorado, parties of the first part, and Peter Starr, of the same place, party of the second part, witnesseth: That the parties of the first part, for and in consideration of the sum of one (1) dollar to them in hand paid, the receipt whereof is hereby acknowledged, have, and by these presents do bargain, sell, and quit claim unto the party of the second part, all their right, title, interests in and to the following-described placer claims and premises situate in California gulch mining district, county of Lake and state of Colorado, to wit:

Beginning at corner No. 1, which bears from corner No. 1, survey No. 255, south 72 degrees 10 minutes W. 1,000 feet; thence N. 50 degrees 30 minutes E. 500 feet to corner No. 2; thence N. 45 degrees E. 500 feet to corner No. 3; thence N. 57 degrees 23 minutes E. 500 feet to corner No. 4; thence N. 57 degrees 15 minutes E. 500 feet to corner No. 5; thence N. 52 degrees E. 500 feet to corner No. 6; thence N. 50 degrees E. 500 feet to corner No. 7; thence N. 60 degrees E. 500 feet to corner No. 8; thence N. 62 degrees E.
240 608 feet to corner No. 9; thence N. 13 degrees 10 minutes W. 507.5 feet to corner No. 10; thence south 62 degrees N. 838 feet to corner No. 11; thence S. 60 degrees N. 500 feet to corner No. 12; thence south 50 degrees W. 500 feet to corner No. 13; thence south 52 degrees W. 500 feet to corner No. 14; thence south 57 degrees 15 minutes W. 500 feet to corner No. 15; thence south 57 degrees 23 minutes W. 500 feet to corner No. 16; thence south 45 degrees W. 500 feet to corner No. 17; thence south 50 degrees 30 minutes W. 500 feet to corner No. 18; thence south 39 degrees 30 minutes E. 500 feet to the place of beginning, containing 39.10 acres, more or less, together with all the appurtenances and rights thereto

belonging, or in any wise appertaining; to have and to hold the same unto himself, heirs, and assigns.

In witness whereof we have hereunto set our hands and affixed our seals this 13th day of May, A. D. 1878.

JAMES McPHELEMY, JR. [SEAL.]
ROGER McPHELEMY. [SEAL.]

COUNTY OF LAKE, } ss.
State of Colorado, }

Personally appeared before me James McPhelemy and Roger McPhelemy, who are known to me to be identical persons who subscribed the within and foregoing instrument, and they ac-
241 knowledged that they executed the same for the uses and purposes therein set forth.

Witness my hand and official seal this 13th day of May, A. D. 1878.

[NOTARIAL SEAL.] D. HOUGHTON,
Notary Public.

Recorded May 13th, A. D. 1878, at 10 a. m.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county and state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the deed of James McPhelemy, jr., Roger McPhelemy to Peter Starr, as appears of record in book D, page 170, of Lake county records, as now remains in my office.

Given under my hand and official seal this 17th day of May, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Clerk and Recorder.

Stray-horse Gulch.

No. 1. L. F. Bradshaw.

Claim 300 feet in Stray-horse gulch, commencing cor. No 1, far in gulch, being No. 1; Oro city, No. 7, 1869; L. D. Breece, recorder.

No. 2. G. Girbs.

Claim 300 feet in Stray-horse gulch, being No. 2; Oro city, No. 7, 1867; S. D. Breece, recorder.

242 No. 3. Sam'l Girber.

Claim 300 feet in Stray-horse gulch, being No. 3; Oro city, No. 7, 1867; S. D.Breece, recorder.

No. 4. John Thompson.

Claim 300 feet in Stray-horse gulch, being No. 4; Oro city, No. 7, 1868; S. D. Breece, recorder.

No. 5. A. J. Hill.

Claim 300 feet in Stray-horse gulch, being No. 4; Oro city, No. 7, 1867; S. D. Breece, recorder.

No. 6. J. Caroth.

Claim 300 feet in Stray-horse gulch, being No. 5; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 7. C. Hilton.

Claim 300 feet in Stray-horse gulch, being No. 7; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 8. Thomas Starr.

Claim 300 feet in Stray-horse gulch, being No. 8; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 9. Wm Huey.

Claim 300 feet in Stray-horse gulch, being No. 9; Oro city, Nov. 7, 1867,; S. D. Breece, recorder.

No. 10. Thomas S. Wells.

Claim 300 feet in Stray-horse gulch, being No. 10; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 11. Jos. Wells.

Claim 300 feet in Stray-horse gulch, being No. 11; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 12. J. J. Long.

243 Claim 300 feet in Stray-horse gulch, being No. 12; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 13. John Henry.

Claim 300 feet in Stray-horse gulch, being No. 13; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 14. John McCarron.

Claim 300 feet in Stray-horse gulch, being No. 14; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 15. O. T. McCannon.

Claim 300 feet in Stray-horse gulch, being No. 15; Oro city, Nov 7, 1867; S. D. Breece, recorder.

No. 16. R. Cleaveland.

Claim 300 feet in Stray-horse gulch, being No. 16; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 17. B. Smithers.

Claim 300 feet in Stray-horse gulch, being No. 17; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 18. S. Gilbertand.

Claim 300 feet in Stray-horse gulch, being No. 18; Oro city, Nov. 7, 1867.

No. 19. Geo. D. Merry.

Claim 300 feet in Stray-horse gulch, being No. 19; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 20. S. D. Breece.

Claim 300 feet in Stray-horse gulch, being No. 20; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 21. C. W. Floyd.

Claim 300 feet in Stray-horse gulch, being No. 21; Oro
244 city, Nov. 7, 1867; S. D. Breece, recorder.

No. 22. A. H. Howe.

Claim 300 feet in Stray-horse gulch, being No. 22; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

No. 23. D. Crea.

Claim 300 feet in Stray-horse gulch, being No. 23; Oro city, Nov. 7, 1867; S. D. Breece, recorder.

STATE OF COLORADO, } *ss.*
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the entries made in the book filed in my office, January 2d, A. D. 1878, as one of the district record books, of the California mining district, Lake county, Colorado, as the same now remains in said book on file in my office.

Witness my hand and official seal this 21st day of May, 1878.

JOS. H. WELLS,
[SEAL.] *Clerk and Recorder.*

This indenture, made this — day of ——, A. D. 1878, by and between Reuben Frazer and William Nye, of the county of Lake and state of Colorado, parties of the first part, and Peter Starr, of

the same place, party of the second part, witnesseth: That the
245 parties of the first part, for and in consideration of the sum of one (1) dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, hath sold, and by these presents do bargain, sell, and quit claim unto the party of the second part all their right, title, and interest in and to the following-described placer claim and premises, situate in California gulch mining district, county of Lake and state of Colorado, viz: Beginning cor. No. 1, sur. No. 255; thence north 16 deg. 45 min. W., variation 15 deg. E. 436 feet; thence north 57 deg. 23 min. E. 407.5 feet; thence north 57 deg. 15 min. E. 500 feet; thence north 52 deg. E., 500 feet; thence north 62 deg. E., 608 feet; thence south 13 deg. 10 min. E., 120 feet; thence south 1 deg. 20 min. E., 600 feet; thence south 29 deg. 40 min. E., 331 feet; thence south 73 deg. 40 min. W., 140.9 feet; thence south 16 deg. 20 min. E., 653 feet; thence 88 deg. 5 min. W., 1426 feet to the place of beginning, containing 53.56 acres, more or less, together with all the appurtenances and rights thereunto belonging, or in any wise appertaining, to have and to hold the same unto himself, heirs, and assigns.

246 In witness whereof we have hereto set our hands and affixed our seals this 13th day of May, A. D. 1878.

WM. NYE. [SEAL.]
REUBEN FRAZER, [SEAL.]
By WM. NYE, *Att'y.* [SEAL.]

COUNTY OF LAKE,
State of Colorado, } *ss.*

Personally appeared before me William Nye and Reuben Frazer, by William Nye, his attorney in fact, who are known to me to be the identical persons who subscribed the written and foregoing instrument, and they acknowledge that they executed the same for the uses and purposes therein set forth.

Witness my hand and seal this 13th day of May, A. D. 1878.

[NOTARIAL SEAL.] D. HOUGHTON,
Notary Public.

The name of Isaac F. Evans was erased before the signing of this instrument.

D. HOUGHTON.

Recorded May 14th, A. D. 1878, at 10 a. m.

STATE OF COLORADO,
County of Lake, } *ss.*

I, Jos. H. Wells, clerk and recorder in and for the county and state aforesaid, do hereby certify that the above and foregoing
247 is a true and correct copy of the deed of William Nye and Reuben Frazer to Peter Starr, as appears of record in book D, page 171, of Lake county records now in my office.

Given under my hand and official seal this 17th day of May, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Clerk and Recorder.

Know all men by these presents that we, Isaac F. Evans, Reuben Frazer, and William Nye, citizens of the United States, of the county of Lake and state of Colorado, having complied with chapter six (6), title thirty-two (32) of the Revised Statutes of the United States and the provisions of other statutes of the United States "to promote the development of the mining resources of the United States," and with the local laws, customs, and regulations, claim by right of discovery, location, and pre-emption as a placer claim the following described premises, situate in California gulch mining district, county and state aforesaid, to wit: Beginning N. corner No. 1, survey No. 255; thence N. 16 deg. 45 min. W. variation 15 deg. E. 436 feet; thence N. 57 deg. 23 min. E. 407.5 feet; thence N. 57 deg.
248 15 min. 500 feet; thence N. 52 deg. E. 500 feet; thence N. 50 deg. E. 500 feet; thence N. 60 deg. E. 500 feet; thence N. 62 deg. E. 608 feet; thence S. 13 deg. 10 min. E. 120 feet; thence S. 1 deg. 20 min. E. 600 feet; thence S. 29 deg. 40 min. E. 331 feet; thence S. 73 deg. 40 min. W. 1409 feet; thence south 16 deg. 20 min. E. 653 feet; thence south 88 deg. 5 min. W. 1426 feet to the place of beginning, containing 53.56 acres of land, more or less.

Witness our hands this the 10th day of April, A. D. 1878.

ISAAC F. EVANS.
REUBEN FRAZER.
WILLIAM NYE.

(Indorsed:) Isaac F. Evans to certificate placer claim; state of Colorado, county of Lake, *ss.*; filed for record at 6 p. m. April 10th, A. D. 1878, and recorded in book 10, page 394; Jos. H. Wells, recorder; fees $2.00.

Know all men by these presents that I, Reuben Frazer, do hereby constitute and appoint William Nye my attorney in fact for me, and in my name, to make application to the United States for entry and purchase of certain government lands in California mining
249 district, county of Lake and state of Colorado, particularly described as follows, to wit: Beginning at cor. No. 1, survey No. 255, thence N. 16 deg. 45 min. W. (variation 15 deg. E.) 436 feet; thence north 57 deg. 23 min. E. 407.5 feet; thence north 57 deg. 15 min. E. 500 feet; thence north 52 deg. W. 500 feet; thence north 50 deg. E. 500 feet; thence north 60 deg. E. 500 feet; thence north 62 deg. E. 608 feet; thence S. 13 deg. 10 min. E. 120 feet; thence S. 1 deg. 20 min. E. 600 feet; thence S. 29 deg. 40 min. E. 331 feet; thence S. 73 deg. 40 min. W. 1,409 feet; thence south 16 deg. 20 min. E. 653 feet; thence south 88 deg. 5 min. W. 1,425 feet

to the place of beginning, containing 53.56 acres of land more or less—and to take any and all steps that may be necessary to procure from the government of the United States a patent to said lands and premises, and to do all other acts appertaining to said entry, as I myself could do if personally present.

In witness whereof I have hereunto set my hand and seal, this 30th day of April, A. D. 1878.

REUBEN FRAZIER. [SEAL.]

STATE OF COLORADO, } ss.
County of Lake, }

Reuben Frazier, who is personally known to me, acknowledged that he signed the above power of attorney for the purpose
250 and uses therein set forth, on the day and year last above written.

[SEAL.] D. HOUGHTON,
Notary Public.

(Indorsed:) Power of attorney, Reuben Frazier to Wm. Nye; state of Colorado, county of Lake, ss.; filed for record at 10 a. m., May 11th, A. D. 1878, and recorded in book D, page 161; Jos. H. Wells, recorder; adverse of Peter Starr; filed in the U. S. land office at Fairplay, Colorado, May 27th, 1878; register.

Copy of location, certificate of the citizens' town-site, situated in California mining district, Lake county, Colorado.

Exhibit "B."

COUNTY OF LAKE, } ss.
State of Colorado, } [Book 10, page 257.

Know all men by these presents, that we, the undersigned, have this 10th day of December, 1877, as trustees for and in behalf of the settlers on a certain piece of government land, hereinafter described, do hereby claim the said parcel or piece of land as town-site, under the laws of Congress; the said piece or parcel is situate, lying, and being in California mining district, county of Lake and state of Colorado, and described as
251 follows, to wit: Beginning at corner No. 1 survey No. 255; thence north 16 deg. 45 min. W., va. 15 deg. E., 436 feet; thence north 57 deg. 23 min. E. 407.5 feet; thence north 57 deg. 15 min. E. 500 feet; thence north 52 deg. E. 500 feet; thence north 50 deg. E. 500 feet; thence north 60 deg. E. 500 feet; thence north 62 deg. E. 608 feet; thence south 13 deg. 10 min. E. 120 feet; thence south 1 deg. 20 min. E. 600 feet; thence south 29 deg. 40 min. E. 331 feet; thence south 73 deg. 40 min. W. 1409 feet; thence south 16 deg. 20 min. E. 653 feet; thence south 88 deg. 5

min. W. 1426 feet, to the place of beginning, containing 53.56 acres of land.

Dated December 19, A. D. 1877.

NELSON HALLOCK,
GEO. E. GEGGE,
Trustees.

Recorded December 19, A. D. 1877, at 5 p. m.

J. D. GRIFFITH.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk and recorder in and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the certificate of location of citizens' town-site, as appears of record in book 10, page 257, of said Lake
252 county records.

Given under my hand and official seal this 23rd day of March, A. D. 1878.

[SEAL.] JOS. H. WELLS,
Clerk and Recorder.

STATE OF COLORADO, } ss.
County of Lake, }

CHAS. W. MILBURN, being duly sworn according to law, deposes and says that he is over the age of 21 years; is a citizen of the United States and of the county and state aforesaid; that he is well acquainted with the town of Leadville, county and state aforesaid; that he has passed through said town with a view of learning the facts herein stated; that the said town now contains about 1,000 inhabitants, and that there has been and are now in course of erection upon the lots of said town stores, dwellings, and other buildings of a permanent and substantial character, to the value of, at least, twenty thousand dollars; that upon the lots embraced in the plat known as the citizens' plat, containing 53.56 acres, and owned and claimed by Nelson Hallock and J. D. Griffith, trustees, and a part of said town of Leadville, there now reside at least two hun-
253 dred inhabitants, and that there is now erected and occupied and in course of erection stores, dwellings, and other buildings on said plat to the value of ten thousand dollars, and that the same is a bona-fide town site.

CHARLES W. MILBURN.

Subscribed and sworn to before me this 6th day of April, A. D. 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

STATE OF COLORADO, } ss.
County of Lake, }

Geo. W. Nyce, being duly sworn according to law, deposes and says that he is over the age of 21 years; is a citizen of the United States and of the county and state aforesaid; that he is well acquainted with the character of land embraced in the so-called citizens' plat of the town of Leadville, embracing 53.56 acres, the same being claimed and possessed by Nelson Halleck and J. D. Griffith as trustees, having frequently passed over the same and examined it with regard thereto; that there is not to his knowledge any
254 placer, cement, or gravel deposits of mineral within the limits of said land, and that the said land is of much more value and use as the site for a town than for mining purposes.

GEO. W. NYCE.

Subscribed and sworn to before me this 6th day of April, A. D. 1878, and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

County of Lake and
STATE OF COLORADO, } ss.

Thomas Starr, being duly sworn according to law, deposes and says that he is over the age of 21 years; is a citizen of the United States and of the county and state aforesaid; that he is well acquainted with California gulch mining district, situate in same county of Lake, and with the improvements, houses, buildings and residences that have been so long a time, that is at least for ten years last past, situate at or near the present site of the town of Leadville, and being well acquainted with the surrounding country; that there is not another location as favorable for a town near the mines
255 now working as the present town site of Leadville, included in which is the land claimed and owned by Nelson Hallock and J. D. Griffith, and by them called the citizens' town site or plat of Leadville, containing 53.56.

That there is now residing on said plat of ground about 300 inhabitants who have settled upon the lots of the same in good faith, and that the said land is more valuable as a site for a town than for mining purposes.

THOMAS STARR.

Subscribed and sworn to before me this 6th day of April, A. D. 1878; and I hereby certify that the deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.] D. HOUGHTON,
Notary Public.

[Here follows map marked page 254½.]

FAIRPLAY, COLO., *Sept.* 23*rd*, 1878.

HON. CARL SCHURZ,
Secretary of the Interior.

SIR: On the second of July, 1878, William H. Stevens and Levi Z. Leiter entered at this office, under the mining laws of the United States, lot 271, by duplicate 154, as appears by document on
256 file in the commissioner's office in your department. Anterior to its entry there was filed in this office a pretended adverse claim under the mining laws of one Peter Starr, which was defective and void: 1st. Because he furnished no abstract showing adverse title in himself, and 2nd. Because there was no map filed in said office pursuant to law showing the adverse claim; but

III. A map of a town site of a part of said premises surreptitiously placed in the office, but which was never filed, as land officers will verify.

On this patent alone delay occurs in the issue of the patent, and in the meantime the lands are covered with hundreds of settlers, and it is very important that the patent should be issued forthwith, and the records will show that there is no legal adverse claim in the premises, and to prevent collision among settlers.

I therefore earnestly solicit that the patent should be issued forthwith, as in law and equity Messrs. Stevens and Leiter are entitled thereto.

Very truly, GEO. P. BATES,
257 *Attorney at Law, Denver, Colorado.*

FAIRPLAY, COLORADO, *Sept.* 23*d*, 1878.

Gen'l CARL SCHURTZ.

MY DEAR SIR: Accident has brought me into this region, where I have just met my old friend (William H. Stevens, of Lake Superior) of forty-five years ago. I have spent a week with him at Leadville, a town which not twelve months ago numbered not five hundred people, but now has a population of over 6,000, and is the Monte Christo of Colorado. I have looked into his mining claim for lot 271, entered by duplicate 154 July 2nd, 1878, and have critically examined the pretended adverse claim of Peter Starr, which in no manner complies with the law, and is null and void under the law, and beg to state that the issuance of a patent seems indispensable necessary to save collision between citizens and bloodshed.

I accordingly enclose herein an official application in be-
258 half of Messrs. Stevens and Leiter, and respectfully beg you to refer the same to the commissioner, asking his prompt action on the case and the issuance of the patent.

Very truly, your old friend, GEO. P. BATES,
of Denver, Col., formerly of Detroit, Mich.

DENVER, COLORADO, *Sept.* 24, 1878.

Hon. Mr. WILLIAMSON,
Commissioner Gen. Land Office.

SIR: The inclosed certificate from the register and receiver of the land office at Fairplay, in this state, prove that at the time within which, under the statute, the contestants were required to file their adverse claim to Stevens and Leiter claim at Leadville, survey No. 271, there was not on file any correct abstract of title, no plat as required by the statutes of the U. S., and that a patent ought to issue to Stevens and Leiter without delay. As the ground is covered all over by pioneers, there will most likely be collision and bloodshed unless the patent issues.

Yours,

GEO. C. BATES,
Attorney for Stevens and Leiter.

U. S. LAND OFFICE,
FAIRPLAY, COLORADO, *Sept.* 23, 1878.

259 We, the undersigned, register and receiver of the above land office, hereby certify that in the adverse of Peter Starr against mineral application of Messrs. Stevens and Leiter, survey No. 271, that the abstract of title was not complete, and that after the said adverse was filed, that there were additional papers placed in the adverse without our knowledge, said papers being a copy of the district records showing that claims No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 had been located under the district mining laws, and we further certify that all the papers in the above case and adverse had been kept in the government safe and it locked at all times when we were not in the office, so that we cannot account for the papers being placed there without our knowing it.

JOHN J. HENRY, *Register.*
WM. K. BURCHINELL, *Receiver.*

FAIRPLAY, COLORADO, *September* 24, 1878.

Hon. Commissioner General Land Office.

SIR: In the case of mineral entry No. 154, survey No. 271, placer claim of Wm. H. Stevens and Levi Z. Leiter, in California
260 mining district, Lake county, Colorado, made July 2nd, 1878, and adversed by Hallock and Griffith, Thomas Starr and Peter Starr, I have the honor to transmit the withdrawal of such, and all of said adverse claims, and to add their certificate that no suit now exists will be forwarded in a day or two.

Most respectfully, &c.,
JOHN J. HENRY, *Register.*

(Indorsed:) Register at Fairplay, Colorado, September 24th, 1878. Transmits withdrawal of adverse claims against Stevens and Leiter's application, mineral entry 154, made July 2nd, 1878.

Withdrawal of Adverse Claim.

In the matter of application of William H. Stevens and Levi Z. Leiter for a U. S. patent to the Stevens and Leiter placer claim, survey No. 271.

And the adverse claim of Peter Starr to the issuance of the same.

To the Register and Receiver of the U. S. Land office, at Fairplay, Colorado:

You are hereby notified that I have withdrawn and do hereby withdraw my adverse claim to the application to the adverse claim of William H. Stevens and Levi Z. Leiter for the so-called
261 Stevens and Leiter placer claim, known and designated as U. S. survey No. 271; said placer claim is situated in California mining district, Lake county, Colorado.

Dated at Leadville this 24th day of September, 1878.

PETER STARR.

In presence of—

A. S. WESTON and
JAMES S. MARSHALL.

(Endorsed:) Stevens and Leiter placer claim; Peter Starr's withdrawal of adverse. Filed in the U. S. land office at Fairplay, Colorado, September 24th, 1878. Jno. J. Henry, register.

Withdrawal of Adverse Claim.

In the matter of the application of William H. Stevens and Levi Z. Leiter for a U. S. patent for the Stevens and Leiter placer claim, being survey No. 271, and the adverse claim of Thomas Starr to the issuance of a U. S. patent therefor.

To the register and receiver of the U. S. land office at Fairplay, Colorado:

You are hereby notified that I have withdrawn and do hereby withdraw my protest and adverse claim to the issuance of a U. S. patent to the placer claim of Wm. H. Stevens and Levi Z.
262 Leiter, being known and designated as survey No. 271, and situated in California mining district, in Lake county, Colorado. Dated at Leadville, Lake county, Colorado, Sept. 24th, 1878.

THOMAS STARR.

In presence of—

A. S. WESTON.
D. T. GRIFFITH.

(Endorsed:) Case of the Stevens and Leiter placer claim; Thomas Starr's withdrawal of adverse claim. Filed in the U. S. land office, at Fairplay, Colorado, September 24th, 1878. Jno. J. Henry, register.

Withdrawal of Adverse Claim.

In the matter of the application of Wm. H. Stevens and Levi Z. Leiter for a U. S. patent to the Stevens and Leiter placer claim, survey No. 271.

And the protest and adverse claim of Nelson Hallock and J. D. Griffith against the issuance of a U. S. patent therefor.

To the register and receiver of the U. S. land office, Fairplay, Colorado:

You are hereby notified that the undersigned have withdrawn and do hereby withdraw their protest against the issuance of a
263 United States patent to William H. Stevens and Levi Z. Leiter to the Stevens and Leiter placer claim situated in California mining district in Lake county, Colorado, and known and designated as survey No. 271, and also withdraw the application for a town site on said premises made by us as trustees.

Dated September 24th, 1878.

NELSON HALLOCK.
J. D. GRIFFITH.

In presence of—
A. S. WESTON.
S. T. GRIFFITH.

(Endorsed:) Case of the Stevens and Leiter placer claim; withdrawal of adverse claim by Hallock and Griffith; filed in the U. S. land office at Fairplay, Colorado, September 24th, 1878; Jno. J. Henry, register.

Certificate that no suit is pending.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk of the District Court in and for Lake county, Colorado, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of the Stevens and Leiter placer mining claim, U. S. survey No. 271, applied for by Wm. H. Stevens and Levi Z. Leiter, and that there has been no litigation before
264 said court affecting the title to said claim, or any part thereof, for ten years last past, other than what has been finally decided in favor of said Stevens and Leiter.

In witness whereof I have hereunto set my hand and affixed the seal of said court at my office, in Granite, this 25th day of June, A. D. 1878.

JOS. H. WELLS, [SEAL.]
Clerk of the District Court of the
[SEAL.] *fourth judicial district, state of Colorado.*

(Endorsed:) U. S. survey 271; form M., U. S. mining act, May 10, 1872; U. S. land office; Stevens and Leiter placer claim, U.

S. survey No. 271; certificate that no suit is pending; filed in the U. S. land office at Fairplay, June 25th, 1878; Jno. J. Henry, register.

Certificate that no suit is pending.

STATE OF COLORADO, } ss.
County of Lake, }

I, Jos. H. Wells, clerk of the District Court in and for Lake county, Colorado, do hereby certify that there is now no suit or action of any character pending in said court involving
265 the right of possession to any portion of the Stevens and Leiter placer mining claim, U. S. survey No. 271, applied for by William H. Stevens and Levi Z. Leiter, and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for ten years last past, other than what has been finally decided in favor of Stevens and Leiter.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office in Granite, this 10th day of June, A. D. 1878.

JOS. H. WELLS, [SEAL.]
[SEAL.] *Clerk of the district court of the 4th judicial district for Lake county, state of Colorado.*

(Indorsed:) Stevens and Leiter placer claim, U. S. survey No. 271. Form M. U. S. mining act May 10, 1872. U. S. Land Office. Filed in the U. S. Land Office at Fairplay, Colorado, June 25th, 1878. Jno. J. Henry, register. Certificate that no suit is pending.

The defendants by their counsel objected to the introduction of the said record of proceedings which took place before the patent
266 was issued, consisting of a certified copy of the proceedings from the land office, because no evidence can be received aliunde the patent to impeach its validity in any way, because the patent is conclusive evidence in this action of the regularity of all the proceedings which took place in the land office before its issuance, and because no evidence can be introduced to show the legality or illegality of the possessory or pre-emption title to the tract of placer land included in the placer patent after the patent has issued, but the court overruled said objection and admitted the said record of proceedings in evidence; to which ruling of the court in admitting said record of the proceedings from the land office in evidence the defendants by their counsel then and their excepted.

And the foregoing was all the evidence introduced on the trial of this case.

And thereupon the court charged and instructed the jury (among other things) the following, that is to say:

267 "The question here, gentlemen, is merely as to who was first in possession of these lots, and I mean actual possession."

To the giving of which portion of the said charge and instruction to the jury by the court the defendants by their counsel then and there duly excepted.

And the court further charged and instructed the jury, that is to say: "The title upon which the defendants rely as coming from the government of the United States is not available to them for the reason that the patent which was issued to them is void, being for a quantity of land which cannot be embraced in a patent for a placer claim in any location made since the year 1870. It is shown in the record which is produced here that this patent was issued upon four locations, made, I think all of them, in the year 1874, or if not so, some of them in the year 1874 and some immediately following that.

Stevens and Leiter in applying for a patent to that ground con-
268 solidated these claims into one and made their application as for one claim, embracing 290 acres—something about that. That was a proceeding not warranted by law."

To the giving of which portion of the said charge and instruction to the jury the defendants by their counsel then and there duly excepted.

The court further charged and instructed the jury as follows, that is to say: "Patents which issued in that manner are of no force or effect."

To the giving of which portion of the said charge and instruction of the court to the jury the defendants by their counsel then and there duly excepted.

And the court further charged and instructed the jury as follows, that is to say: "So that we treat the title put forward by the defendants as no title whatever, and say to you that it is simply a question between these parties as to which one of them first had possession of these lots. Now, as to that question here, as has been explained to you as to two of the lots, 30 and 31, in block 7, and

there is some controversy as to whether the plaintiff here had
269 any possession whatever of lots 30 and 31 prior to the possession which the defendants say that they took of these lots."

To the giving of which portion of the charge of the court to the jury the defendants by their attorneys then and there duly excepted.

And the court further charged and instructed the jury as follows, that is to say: "The plaintiff claims, I think in his testimony, and perhaps there is some other testimony to support it, that he had put some improvements upon these lots also, 30 and 31, before the defendants came there at all, and that is a question for you to determine. But I say to you whoever first had possession of these lots will prevail in this action. If the plaintiff had the first occupation and the defendants came there and put him out he is entitled to a verdict. And if the defendants took possession of the lots, being vacant and unoccupied, and put a fence around them, and the plaintiff went upon the lots and attempted to build a house there, even if there

was some breach of the peace in what they did there to get him
270 out, that would not enable him to support this action."

To the giving of which portion of the charge and instruc-

tion of the court to the jury the defendants, by their counsel, then and there duly excepted.

And the court further charged and instructed the jury as follows, that is to say: "So the important question for your consideration is who was first there. If you find the issue for the plaintiff he is entitled to such damages you believe from the evidence the use of the property from the time he was put out in April, 1879, to the present, may be worth."

To the giving of which portion of the charge and instruction of the court to the jury the defendants, by their counsel, then and there duly excepted.

And the court further charged and instructed the jury as follows, that is to say: "As to the discussion that was had before you as to some testimony that was given by deposition of the plaintiff here and statements made by him in the bill in equity that has been filed by him to enforce the execution of the contract, which they
271 allege he made with Stevens and Leiter for the purchase of this property, all that is of no importance except as it affects his credibility. It is not true that the plaintiff is estopped in this action by anything that is shown in respect to the bringing of that suit in equity or the testimony that he has given in the case."

To the giving of which portion of the said charge and instruction of the court to the jury the defendants, by their counsel, then and there duly excepted.

And forasmuch as the matters and things above set forth do not fully appear of record, the said defendants tender this their bill of exceptions, and pray that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly this 20th day of December, being one of the judicial days of said term of court, A. D. 1880, at the city of Denver, in said district.

(Signed) MOSES HALLETT, [SEAL.]
District Judge.

272 (Endorsed:) 438; Circuit Court U. S.; Frank Mosser *vs.* L. R. Tucker and R. G. Wilson; bill of exceptions; filed Dec. 22, 1880, as of Dec'r 20th, A. D. 1880; (signed) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 3d day of January, A. D. 1881, came again the said defendants by their attorneys aforesaid, and filed in said court and in said cause their bond in appeal to the Supreme Court of the United States, and sued out of said court a writ of error and citation to said to said Supreme Court.

And the said bond is in words and figures as follows, to wit:

273 *Appeal Bond.*

U. S. Circuit Court, Colorado.

UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents, that we, L. R. Tucker and R. G. Wilson, as principals, and I. W. Chatfield and Nelson Hallock as sureties, are held and firmly bound unto Frank Mosser in the full and just sum of five thousand ($5,000) dollars, to be paid to the said Frank Mosser, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this —— day of ———, in the year of our Lord one thousand eight hundred and ———.

Whereas, lately at the October term, A. D. 1880, of the Circuit Court of the United States for the district of Colorado, in a suit pending in said court between Frank Mosser, plaintiff, and L. R. Tucker and R. G. Wilson, defendants, judgment was rendered against the said L. R. Tucker and R. G. Wilson; and the said L. R. Tucker and R. G. Wilson having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Frank Mosser, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said L. R. Tucker and R. G. Wilson shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

(S'g'd)	L. R. TUCKER.	[SEAL.]
(S'g'd)	R. G. WILSON.	[SEAL.]
(S'g'd)	I. W. CHATFIELD.	[SEAL.]
(S'g'd)	NELSON HALLOCK.	[SEAL.]

Sealed and delivered in presence of—

(S'g'd) M. ADAMS.

Approved. (S'g'd) MOSES HALLETT,
Jan. 3d, 1881. *District Judge.*

274 *Justification.*

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss.*

I. W. Chatfield and Nelson Hallock, sureties on the within bond, being each first duly sworn, depose and say: That they are each worth in real property the sum below set opposite their names, respectively,

that is to say, as to I. W. Chatfield, five thousand dollars; as to Nelson Hallock, five thousand dollars, over and above all their just debts and liabilities, and in property subject to levy and sale upon execution.

(S'g'd) I. W. CHATFIELD. $5,000.00.
(S'g'd) NELSON HALLOCK. $5,000.00.

Subscribed and sworn to before me, at Leadville, this 27th day of December, A. D. 1880.

(S'g'd) WM. RAYMON,
[SEAL.] *Clerk County Court, Lake county, Colorado.*

(Endorsed:) Gen. No. 438; Circuit Court of the United States, district of Colorado; L. R. Tucker and R. G. Wilson, plaintiffs in error, *vs.* Frank Masser; appeal bond, $5,000; filed in the Circuit Court, U. S., this 3d day of Jan'y, A. D. 1881; (s'g'd) Edward T. Bishop, clerk.

And the said writ of error is in words and figures as follows, to wit:

275 Writ of error to the Circuit Court U. S., district of Colorado.

The United States of America.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss.*

The President of the United States to the judges of the Circuit Court of the United States for the district of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, between Frank Masser and L. R. Tucker and R. G. Wilson, a manifest error hath happened to the great damage of the said L. R. Tucker and R. G. Wilson, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 3d day of Jan'y, in the year

of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the 105th year.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Allowed by Moses Hallett, district judge.

276 *Return.*

THE UNITED STATES OF AMERICA, } ss.
District of Colorado, }

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

Witness my hand and the seal of said Circuit Court, at Denver, in said district, this 22d day of July, A. D. 1881.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

(Endorsed:) Supreme Court, gen. No. 438; Circuit Court of the United States; L. R. Tucker and R. G. Wilson, plaintiff in error, *vs.* Frank Masser; writ of error to Circuit Court U. S., district of Colorado; filed in —— court of the U. S., this —— day of ——, A. D. 18—; ——, clerk; by ——, deputy clerk; G. G. Symes, attorney for plaintiffs in error.

And the said citation is in words and figures as follows, to wit:

277 Citation. U. S. Supreme Court.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Frank Mosser, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, wherein L. R. Tucker and R. G. Wilson are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the Circuit Court of the United States for the district of Colorado, this 3d day of January, in the year of our Lord one thousand eight hundred and 81.

MOSES HALLETT,
District Judge.

278 *Proof of Service.*

THE UNITED STATES OF AMERICA, } ss.
District of Colorado, }

On this 5th day of January, A. D. 1881, personally appeared Chas. W. Reitler before me, the subscriber, a clerk of the Circuit Court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to T. A. Green, esq., the attorney of record for the defendant in error.

CHAS. W. REITLER.

Sworn to and subscribed before me this 5th day of January, A. D. 1881.

EDWARD F. BISHOP, *Clerk.*
By F. W. TUPPER, *Deputy Clerk.*

(Endorsed:) Gen. No. 438; Circuit Court of the United States, district of Colorado; L. R. Tucker and R. G. Wilson, plaintiffs in error, *vs.* Frank Mosser, defendant in error; citation; G. G. Symes, attorney for plaintiff in error.

279 UNITED STATES OF AMERICA, }
DISTRICT OF COLORADO, } ss.
Sitting at Denver, }

I, Edward F. Bishop, clerk of the Circuit Court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the complaint, summons, answer, replication, depositions, amended complaint, mo. & aff. for new trial, petition, mo. for new trial, mo. for nonsuit, bill of ex., bond writ of error & citation, and all orders of court heretofore filed or had and entered of record in said court, and in a certain cause lately in said court pending, wherein Frank Masser was plaintiff and L. R. Tucker and R. G. Wilson were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 22d day of July, A. D. 1881.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Cost of transcript: 520 fols., at 10c, 52.00; 4 maps, at 2.50, 10.00; certificate, 35c.—$62.35. Paid by Weston & Rowell.

(Endorsement on cover:) Colorado, C. C. U. S. No. 299. L. R. Tucker and R. G. Wilson, plaintiffs in error, *vs.* Frank Masser. Filed September 22, 1881. 279 pages; 4 maps.

IN THE

Supreme Court

OF THE

United States,

October Term, 1884.

L. R. TUCKER and
R. G. WILSON,
Plaintiffs in Error,

against

CLARA MOSSER, widow,
ELISHA MOSSER and
ARCHIE REED MOSSER,
only heirs at law of
FRANK MOSSER, Deceased,
Defendants in Error.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

L. C. ROCKWELL, WITH
CHARLES J. ROWELL,
Attorneys for Plaintiffs in Error.

Pierson & Gardner, Printers, Denver, Colo.

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IN THE

SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, A. D. 1884.

L. R. TUCKER and R. G. WILSON, *Plaintiffs in Error,* *against* CLARA MOSSER, widow, ELISHA MOSSER and ARCHIE REED MOSSER, only heirs at law of FRANK MOSSER, Deceased, *Defendants in Error.*	No. 24.

STATEMENT OF THE CASE.

Error to the Circuit Court of the United States, for the District of Colorado.

This was an action instituted on the 23d day of March, 1880, by Frank Mosser, plaintiff, against L. R. Tucker and R. G. Wilson, defendants, in the Circuit Court of the United States for the District of Colorado. The complaint was one in ejectment under the Code, and states that on the 10th day of March, 1879, Frank Mosser was, and still

is, the owner by prior actual possession on the public domain, and by superiority of possessory title, and was entitled to the immediate possession of lots thirty (30), thirty-one (31) and thirty-three (33), block seven (7), in Stevens and Leiter's subdivision to the city of Leadville, Lake county, Colorado. That said lots were of the value of five thousand dollars ($5,000.) That the defendants on the 20th day of March, 1879, wrongfully and unlawfully entered upon said lots and ousted the plaintiff therefrom, to the damage of one thousand ($1,000) dollars. That the rents and profits per month of said premises since said ouster was two hundred ($200) dollars, making the aggregate rental thereof three thousand ($3,000) dollars. Plaintiff prays for restitution of the premises and for damages, one thousand dollars ($1,000), and three thousand dollars ($3,000) for the rents and profits. (p. 1 of record).

On the 3d day of March, 1880, defendants answered, making a general denial to all the material allegations of the complaint, and averred that they were the owners in fee upon the 20th day of March, 1879, of said premises sued for, and were then in possession of and entitled to the possession thereof. (pp. 3–4 of record).

On the 11th day of June, 1880, the cause was called for trial; no appearance for the defendants; a jury was called; verdict in favor of the plaintiff, adjudging him to be the owner of the property as to lots thirty (30) and thirty-one (31), (pp. 12–13), which judgment was subsequently vacated by the Court upon payment of costs by defendants, and a new trial awarded under the statute.

On the 22d day of October, 1880, the second trial was had before a jury, at which trial a verdict was given in favor of the plaintiff, adjudging him to be the owner of the property, and assessing the damages at eighteen hundred and fifty dollars ($1,850). (pp. 17–18). Subsequently,

the motion for new trial having been filed and overruled, judgment was rendered upon the verdict, adjudging the plaintiff to be the owner of lots thirty (30) and thirty-one (31), and the sum of eighteen hundred and fifty dollars ($1,850) damages and costs of suit. (p. 20).

On the trial plaintiff offered evidence tending to show his prior occupation and possession of the lots in question; that he erected some buildings thereon and defendants came there with a force of armed men and drove plaintiff off and demolished what improvements he had upon the lots. (pp. 21–2 of the record, folios 42 to 66.) And after offering some testimony as to damages, rested his case.

Whereupon defendants introduced in evidence a patent from the government of the United States to William H. Stevens and Levi Z. Leiter, dated the 5th day of November, A. D. 1878, which patent included the lots in controversy (p. 35), which patent was for a placer mining claim, known as lot 271. (p. 37). Defendants also adduced title by divers mesne conveyances from Stevens & Leiter, patentees, to themselves, of lots thirty (30), thirty-one (31) and thirty-two (32), block seven (7) Stevens & Leiter's subdivision to the city of Leadville, which are the identical lots in controversy. (pp. 38 and 39, folios 90 and 91). And after offering some testimony as to defendants' possession, defendants rested.

Whereupon, plaintiff was allowed to impeach the patent so offered in evidence by introducing in evidence the application for patent and all proceedings had in the land office of the government upon which it was predicated, in order to show that more land was included in the application and embraced in the patent, than the law authorized to be so included in one application and patent. (p. 47, folio 110). To the introduction of which proceedings defendants objected. (p. 111, folio 266). Because

such evidence could not be received to impeach the patent; that the patent was conclusive evidence of the regularity of the proceedings upon which it was predicated before its issuance, and because no evidence can be introduced to show the legality or illegality of the possessory or pre-emption title of the tracts of land included in the placer claim, after the patent had been issued. All of which objections were overruled and defendants excepted, and the proceedings in the land office were read to the jury. After which, the plaintiff rested, and the Court instructed the jury: (folio 267) "The question here, gentleman, is merely as to who was first in possession of these lots, and I mean actual possession." To the giving of which charge defendants then and there excepted.

The Court further charged: "The title upon which the defendants rely as coming from the government of the United States, is not available to them, for the reason that the patent which was issued to them was for a quantity of land which could not be embraced in any patent for a placer claim in any location made since the year 1870. It is shown in the record which is produced that this patent was issued upon four locations, made, I think, all of them, in the year 1874, or, if not so, some of them in the year 1874 and some immediately following that. Stevens & Leiter in applying for a patent to that land, consolidated these claims into one, and made their application as for one claim, embracing 290 acres. (p. 112, folio 268). That was a proceeding not warranted by law." To the giving of which instruction defendants then and there excepted.

The Court further charged: "Patents which issue in that manner are of no force or effect." To that portion of the charge defendants then and there excepted.

The Court further charged: "So that we treat the patent put forward by the defendants, as no title whatever,

and we treat this simply as a question between the parties as to which one of them first had possession of these lots." To the giving of which instruction defendants excepted. (p. 112, folios 268–9).

Under these instructions the jury found the issues in favor of the plaintiff; that he is the owner and entitled to occupy and possess the premises described in the complaint, and assessed his damages at one thousand eight hundred and fifty dollars ($1,850). (p. 18, folio 35 of Record.) And after the overruling of a motion for a new trial, judgment was rendered upon the verdict. (p. 20, folio 40 of Record.)

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

Defendants in the Court below bring this case here by writ of error and ask that that judgment may be reviewed and reversed for the following errors:

First—Because the Court erred in admitting in evidence the transcript of the proceedings had in the land office on the application of Stevens & Leiter for patent, to impeach the validity of the grant, by showing that three or more locations for mining claims, covering 290 acres in all, were embraced and consolidated by the patentees, Stevens & Leiter, in one application for patent and a patent issuing for that quantity of ground.

Second—That the Court erred in instructing the jury, "that the title upon which the defendants rely as coming from the government of the United States, is not available to them, for the reason that the patent which was issued to them was void; being for a quantity of land which cannot be embraced in a patent for a placer claim in any location made since the year 1870. It is shown in the record which is produced here, that this patent was

issued upon four locations, made, I think, all of them, in the year 1874, or if not so, some of them in the year 1874, and some immediately following that. Stevens & Leiter in applying for a patent to that ground, consolidated these claims into one, and made their application as for one claim, embracing 290 acres, something about that; that was a proceeding not warranted by law."

Third—That the Court erred in instructing the jury, that "patents which issued in that manner are of no force or effect, and that we treat the title put forward by the defendants as no title whatever, and say to you that it is simply a question between the parties as to which one of them first had possession of these lots."

Fourth—The Court erred in not giving to the patent issued by the government of the United States to Stevens & Leiter, the force and effect of a good and valid grant by the government to them, and in not instructing the jury that the conveyance offered in evidence by the defendants below from Stevens & Leiter, the patentees, to themselves, conveyed the fee of the land to said defendants.

This case belongs to a series of suits tried in the Circuit Court of the United States for the District of Colorado, in the years 1879 and 1880, which involved the construction of a patent issued to William H. Stevens and Levi Z. Leiter, for a certain placer claim covering 290 acres, situate in the city of Leadville, as against a large class of people claiming the same ground by possessory title to town lots in that city.

The proceedings under this application for patent were commenced in March, 1878, (p. 47 of R.), and upon the 2d day of July of that year, Stevens & Leiter entered and paid for the land embraced in the patent. (p. 35, folio 81 of R.) After the entry was made a protest was filed by

certain adverse claimants, but not by the ancestor of defendants in error, in the United States land office, which was unavailing, and upon the 5th day of November, 1878, the government, by its proper officers, delivered to Stevens & Leiter, a patent for 290 acres of placer ground. (p. 38, folio 90 of R.) Stevens & Leiter caused a portion of this ground to be laid off in town lots, and proceeded to sell to A, B, C and D; defendants below, plaintiffs in error here, purchasing of Stevens & Leiter the lots embraced in this action. But prior to the delivery of this patent, Leadville became populated by a large number of people, claiming the right to occupy and possess lots in that city by locating them under the local laws of the State. Such was the title of the plaintiff in this action. The Court allowed plaintiff to prove such a title and also permitted the defendants to introduce in evidence the patent to Stevens & Leiter, and a proper chain of title from such patentees to themselves, and then the Court permitted plaintiff to show the various steps and proceedings had and taken by Stevens & Leiter in the land office, upon which their patent was predicated, to impeach the same; and instructed the jury that those proceedings were not in accordance with law, and the patent was absolutely void, and defendants could claim no right, title or interest, under the same, and put the case to the jury upon the fact as to which party, either plaintiff or defendants, was first in the actual possession of the lots in question—the Court wholly ignoring the patent and telling the jury defendants' title, derived thereunder, was absolutely void and was no defense in this action.

This was an action, commonly known and called one in ejectment, although the pleadings were framed under the Code of Civil Procedure of the State of Colorado.

Chapter XXIV of the Code of 1877, page 96, entitled "Actions to recover the possession of real property and

damages for the detention thereof," sections 247, 248, 249, 250 and 251, provide as follows:

"SECTION 247. An action to recover the possession of real "property may be brought in any case when an action of "ejectment or a writ of right might have been brought "at common law, and in any case where the plaintiff "claims a legal estate in real property or lands, in fee, or "for life, or for years, or claims the legal right to occupy "and possess the same."

"SEC. 248. If the premises for which the action is "brought are continually occupied, such actual occupant "shall be made defendant in the action, together with "any person claiming title to, or an interest in the prem- "ises adversely to the plaintiff. If the premises are not "occupied, the action shall be brought against any per- "son exercising acts of ownership on or over the premises "claimed, or who claims title thereto, or some interest "therein, at the time of the commencement of the action."

"SEC. 249. The plaintiff, in his complaint, shall set "forth the nature and extent of his estate in the property, "and state whether it be in fee, for life, or for the life of "another, or for a term of years, and specifying such life "or duration of such term; or if such plaintiff claims the "legal right to occupy and possess the premises under the "local laws and rules of any mining district, or of the "United States, the State of Colorado, or otherwise, the "complaint shall contain a brief statement of such pos- "sessory claim, and whether the right claimed is by pre- "emption or purchase, or by right of actual prior posses- "sion on the public domain of the United States. If the "plaintiff claims any undivided interest in the premises, "as tenant in common or otherwise, he shall state par- "ticularly the interest he claims. The plaintiff shall also "state that he is entitled to the possession of the premises, "and that the defendant wrongfully ousted the plaintiff,

"or wrongfully withholds the premises from him, or both, "as the facts may be, and state the damages claimed for "the ouster, or detention, or both, which damages shall "be recovered and assessed by the Court or jury in the "same action."

"SEC. 250. The answer to a complaint filed under this "chapter shall either specifically deny the material allega- "tions of the complaint, or may disclaim any interest in or "possession of the property claimed, or any part thereof. "The answer may also state, generally, as in the complaint "the character of the estate in the premises, or any part "thereof, which the defendant claims, or any right of pos- "session or occupancy he claims.

"SEC. 251. The verdict may be for or against either of "the plaintiffs or defendants, and shall be rendered as "follows:

"*First*—If it be shown on the trial that all the plain- "tiffs have a right to recover the possession of the premi- "ses, the verdict in that respect shall be for the plaintiffs, "generally.

"*Second*—If it appears that one or more of the plain- "tiffs have a right to the possession of the premises, and "that one or more have not such right, the verdict shall "specify for which plaintiff the jury find, and as to which "plaintiff they find for the defendant.

"*Third*—If the verdict be for any plaintiff and there "be several defendants, the verdict shall be rendered "against such of them as were in the possession of the "premises, or as claimed title thereto, at the commence- "ment of the action.

"*Fourth*—If the verdict be for all the premises claimed "as specified in the complaint, it shall in that respect be "for such premises generally.

"*Fifth*—If the verdict be for a part of the premises de- "scribed in such complaint, the verdict shall particularly

"specify such part, as the same shall have been proved, "with the same certainty hereinbefore required in the de- "scription of the premises claimed.

"*Sixth*—If the verdict be for an undivided share or in- "terest in the premises claimed, it shall specify such share "or interest, and if for an undivided share in a part of "the premises claimed, it shall specify such share, and "shall describe such part of the premises as hereinbefore "required.

"*Seventh*—The verdict shall specify the estate which "shall have been established on the trial by the plaintiff "in whose favor it shall be rendered, whether such estate "be in fee for his own life, or for the life of another, stat- "ing such lives, or whether it be for a term of years, spec- "ifying the duration of such term, or whether the plain- "tiff hath established only his right to the possession and "occupancy of the premises in controversy.

"The verdict shall also, if for the plaintiff, find the "amount of damages he is entitled to for the ouster or "detention, or both."

In Colorado, as in all other States in such actions, the legal title prevails.

Smith vs. Pipe, 3 Colo., 187.
Poire vs. Wells, 6 Colo., 406.

Plaintiff below framed his complaint in harmony with Sec. 249, above quoted, by alleging that he was the owner of the property in question by actual prior possession of the public domain and by superiority of the possessory title. (Folio 2 p. 1 of R.) The answer fully denied those allegations as to possession and ownership, and puts in issue all the material allegations of the complaint, and then affirmatively averred that upon the 20th day of March, A. D. 1879, and always thereafter, defendants were the owners in fee of the lots in question. (P. 4, folio 7 of

R.) To the averment in the answer that defendants were the owners in fee, plaintiff replied denying that fact (folio 8, p. 4 of R.)

The issues made were purely legal, in which the fee simple title pleaded and proved by the defendants should have defeated the action, but the Court, to destroy such title, admitted evidence showing the various steps taken in the land office by Stevens & Leiter upon which their patent issued (p. 46, folio 108 of R.) This was clearly error.

Smelting Co. vs. Kemp, 14 Otto, 630, and cases there cited.

This last quoted case involved precisely the same questions here raised; that case was tried in the same Court presided over by the same Judge who tried this one; the same erroneous theory of the law was carried out, which was, that not more than 160 acres could be embraced in any patent for a mining claim; that if the proceedings upon which the patent issued showed that two or more locations upon mining claims had been consolidated and were embraced in one application for patent, the grant was void, and forasmuch as Stevens & Leiter had covered 290 acres with their application for patent, the same was void. And inasmuch as the questions raised in this record were presented in the case of Smelting Co., *supra*, and there fully considered by this Court, the doctrine laid down in that case must be conclusive in this one.

Following the doctrine of Smelting Co. vs. Kemp, *supra*, the Supreme Court of the State of Colorado in

Poire vs. Wells, 6 Colo., 406,

under the identical patent in question, ruled that such patent could not be impeached in a Court of law in an action similar to this one.

What has been said with reference to the first assignment of errors is equally applicable to the second one,